# 1NC

## Off case

**T Mergers**

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

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

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

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

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

### States

#### The 50 states and all relevant sub-national actors should

#### substantially increase prohibitions on anticompetitive business practices by prohibiting unilateral exclusion that reduces competition significantly.

#### coordinate antitrust enforcement through the National Association of Attorneys General’s Multistate Antitrust Task Force

#### 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.

### Politics

#### Build Back Better will pass---PC is key

Barron-Lopez 11-11 (Laura Barron-Lopez, Politico Staff, Dems to White House: The only prescription is more Biden, <https://www.politico.com/news/2021/11/11/dems-white-house-biden-520946>)

After months of deference to Congress, President Joe Biden moved more assertively last week to shepherd half his domestic agenda into law. With the other half still in limbo, Democrats want some of that Biden punch again.

Outside groups fear that congressional Democrats could come up short on Biden’s social spending package. They are concerned that moderates in the House may end up buckling if the budget scores on the bill come back worse than anticipated. And there is residual anxiety that one of the two wavering Senate Democrats — Joe Manchin of West Virginia and Kyrsten Sinema of Arizona — could vote “no” over concerns about inflation and long-term debt.

The clearest solution to avoiding this, they argue, is more Biden.

“All eyes are on the president, all expectations are on the president,” said Lorella Praeli, co-president of the progressive Community Change Action. “We are playing our role. We are mobilizing. We're reminding people everyday what this is about.”

Praeli added that Biden must ensure there aren’t future cuts to the package, which dropped from $3.5 trillion to $1.75 trillion to accommodate centrist Democrats in the House and Senate. “This is what he campaigned on. Only the president can deliver it in the end.”

Until last week, Biden’s involvement in negotiations had been more deferential than managerial. That befuddled lawmakers, who were waiting for him to draw red lines about which priorities he wants in and out of the deal or to even demand votes. To date, Biden has publicly refrained from drawing a red line around including paid leave in the final version of the legislation, leaving the leadership in the House at odds with centrists in the Senate.

But Biden did ramp up his involvement in the negotiations last week. And Democrats viewed that as key to getting an agreement in the House on their infrastructure bill, as well as on a rule to move forward with their social spending package, which funds universal pre-K, expands Medicare access, cuts taxes for families with children 18 years old and under, and combats climate change.

Now they want more. Expectations are high for Biden to keep the House to its promise of a vote on that social spending plan the week of Nov. 15.

“They basically made a promise,” said Rahna Epting, executive director of the progressive advocacy group MoveOn. “And Biden was able to get enough progressives to vote for the bipartisan infrastructure bill, on that promise. We are expecting Biden and the Democratic Caucus will make good on their word and pass the Build Back Better Act no later than Nov 15th as stated.”

White House officials contend that Biden and his team remain in close touch with the Hill, and their legislative affairs staff continues to push the social spending bill toward a vote. The White House said it is communicating regularly with a range of lawmakers including Manchin, but did not answer when asked whether Biden has spoken to the West Virginia senator or other moderates in recent days.

“There has been no kind of slowdown when it comes to our Hill outreach,” a White House official said.

The growing demands for Biden to stay heavily involved reflect a fear in the party that the window to act on the agenda is quickly closing, especially as concerns mount about lingering inflation and the midterms near. If the House meets its deadline next week and passes the social spending bill, some Democrats want Biden to issue a deadline for the Senate to act. Others noted that the end-of-year legislative calendar is short and brutal.

The “dynamic has totally changed,” said a Democratic strategist. “The president secured this agreement with the five holdouts for House passage of BBB next week and it’s on him to enforce it.”

#### Antitrust trades-off

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.

#### BBB solves climate

Davenport 10-28 (Coral Davenport, NYT Staff, President Biden unveiled a revised spending plan in an effort to try to pass a $1.85 trillion social safety net bill and a $1 trillion infrastructure measure, <https://www.nytimes.com/2021/10/28/climate/climate-change-framework-bill.html>, y2k)

WASHINGTON — Climate has emerged as the single largest category in President Biden’s new framework for a huge spending bill, placing global warming at the center of his party’s domestic agenda in a way that was hard to imagine just a few years ago.

As the bill was pared down from $3.5 trillion to $1.85 trillion, paid family leave, free community college, lower prescription drugs for seniors and other Democratic priorities were dropped — casualties of negotiations between progressives and moderates in the party. But $555 billion in climate programs remained.

It was unclear on Thursday if all Democrats will support the package, which will be necessary if it is to pass without Republican support in a closely divided Congress. Progressive Democrats in the House and two pivotal moderates in the Senate, Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona, did not explicitly endorse the president’s framework. But Mr. Biden expressed confidence that a deal was in sight.

If enacted, it would be the largest action ever taken by the United States to address climate change. And it would enshrine climate action in law, making it harder to be reversed by a future president.

In remarks Thursday, Mr. Biden called it “the most significant investment to deal with the climate crisis that ever happened, beyond any other advanced nation in the world.”

The centerpiece of the climate spending is $300 billion in tax incentives for producers and purchasers of wind, solar and nuclear power, inducements intended to speed up a transition away from oil, gas and coal. Buyers of electric vehicles would also benefit, receiving up to $12,500 in tax credits — depending on what portion of the vehicle parts were made in America.

The rest would be distributed among a mix of programs, including money to construct charging stations for electric vehicles and update the electric grid to make it more conducive to transmitting wind and solar power, and money to promote climate-friendly farming and forestry programs.

The plan would still fall short of the ambitious pledge Mr. Biden has made to halve the country’s greenhouse gases, from 2005 levels, by the end of this decade. Scientists say that nations must quickly and deeply cut emissions from burning oil, gas and coal to avert the most harrowing impacts of climate change.

As many of the social spending programs fell by the wayside, the primacy of climate remained during weeks of tense negotiations between the White House and progressive and centrist lawmakers.

Mr. Manchin, who played an outsized role in shaping the debate, was able to kill the most powerful mechanism in Mr. Biden’s climate plan — a program that would have rewarded power companies that moved from fossil fuels to clean energy, and penalized those that did not. Mr. Manchin’s state is a top coal and gas producer, and he has personal financial ties to the coal industry.

But during negotiations, Democratic lawmakers of different political leanings all made climate policy a priority.

Rising activists and a sustained push

Many Democrats said they were newly energized to take on climate change after cascading climate disasters over the past year. Record droughts, flooding, wildfires and heat waves — which scientists said are worsened by climate change — devastated nearly every corner of the country.

Liberals and many moderates in Congress, including vulnerable House members in swing districts, pushed the administration to focus on the issue. One group of moderate House Democrats even suggested that Democrats not worry about offsetting climate spending with tax increases.

There was also a sustained drive inside the administration to elevate the issue. Mr. Biden has repeatedly linked cutting emissions to job creation, echoing the views of many of his top economic advisers, like Brian Deese, who heads the National Economic Council. Mr. Deese has said he sees the fate of America’s middle class over the coming decades entwined with the country’s ability to dominate the industries powering emissions reduction.

At the same time, a new generation of climate activists has been advising the president on his agenda, and warning lawmakers that they risk losing young voters if they do not act.

Mr. Biden seemed to nod at the generational aspect of the crisis on Thursday, when he spoke about meeting an electrical worker in Pittsburgh worried that climate change threatened his children’s future. “Folks, we all have that obligation, an obligation to our children and to our grandchildren,” Mr. Biden said.

In Congress, House Speaker Nancy Pelosi and Senate Majority Leader Chuck Schumer instructed committees to draft climate change legislation that would meet Mr. Biden’s targets to cut emissions.

And Mr. Biden has been under growing pressure to demonstrate that the United States, as the country that has fueled climate change by emitting the most greenhouse gases, is taking action when he appears Monday at a pivotal United Nations summit on climate. Showing up empty-handed would damage the United States’ credibility on the world stage.

#### 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.

### T Per se

#### Prohibit means forbid by authority

Merriam-Webster No Date <https://www.merriam-webster.com/dictionary/prohibition> and <https://www.merriam-webster.com/dictionary/prohibiting>

Definition of prohibition 1: the act of prohibiting by authority

Definition of prohibit transitive verb 1: to forbid by authority : ENJOIN

#### Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’

John Paul Stevens 90, Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals assumed that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the per se rule prohibiting such activity "is only a rule of 'administrative convenience and efficiency,' not a statutory command." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of judicial interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as any other statutory commands. Moreover, while the per se rule against price fixing and boycotts is indeed justified in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified only by such concerns. The per se rules also reflect a long-standing judgment that the prohibited practices by their nature have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality -- they are 'illegal per se.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in antitrust law serve purposes analogous to per se restrictions upon, for example, stunt flying in congested areas or speeding. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps most violations of such rules actually cause no harm. No doubt many experienced drivers and pilots can operate much more safely, even at prohibited speeds, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be enforced against these skilled persons without proof that their conduct was actually harmful or dangerous.

In part, the justification for these per se rules is rooted in administrative convenience. They are also supported, however, by the observation that every speeder and every stunt pilot poses some threat to the community. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Prefer it:

#### 1) GROUND---key to link uniqueness and a unidirectional topic. Fringe standards dodge topic links, AND they can pick a broader but more permissive standard, making the topic bidirectional.

#### 2) LIMITS---too many possible standards, each requiring distinct answers, makes the topic unmanagbly large.

**FTC**

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

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

1. The Antitrust Division of the **D**epartment **o**f **J**ustice (DOJ) and the U.S. **F**ederal **T**rade **C**ommission (FTC) (collectively the Agencies) offer this joint submission in response to the Competition Committee’s review of the **role** of **competition policy** in promoting **economic recovery**. In this paper, we highlight some **key steps** that the Agencies have taken to respond to the present **COVID-19 crisis** in the United States and to help promote **a rapid** and **sustained economic recovery.**

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

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

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

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

2.1. COVID-19 Hoarding and Price Gouging Task Force

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

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

2.2. Procurement Collusion Strike Force

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

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

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

2.3. Protecting Competition in Labor Markets

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

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

2.4. Consumer Protection

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

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

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

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

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

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

3.1. International Advocacy

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

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

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

3.2. Doctrinal Responses

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

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

3.3. Competition Advocacy

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

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

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

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

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

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

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

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

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

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

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

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

5. Revised Rules Regarding Merger Enforcement

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

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

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

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

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

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

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

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

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

**Failed COVID recovery triggers multiple hotspots**

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

The broader danger is the world’s **perception** now of America as **inept** and vulnerable, Doug Lute, a retired lieutenant general who was the director of operations for the Joint Chiefs and a deputy national-security adviser to Presidents George W. Bush and Barack Obama, told me. “There are two things that would drive our competitors—the general sense of incompetence by the executive branch and a reading that we are totally self-absorbed internally,” he said. “There’s an overlapping of the pandemic, the protests, and now the election that amplifies that image. In broad terms, those conditions internally will be viewed by external competitors as **opportunities**.” America faces **threats** from a spectrum of **overseas adversaries**, the retired Marine General John Allen, who is now the president of the Brookings Institution, told me. “I’m deeply concerned that there will be **foreign actors**, all the way from **jihadists** to **state actors,** that try to **take advantage** of a level of duress that we haven’t seen for a long time. It has not been lost on our adversaries, or those who would seek to gain ground, that the United States has consciously chosen to withdraw.” The sense of “**sheer confusion**” surrounding American politics in 2020 compounds the **temptation** of foreign actors to make **moves**, either for their own gains or to diminish America, Allen said. The most obvious perils are from the **big powers**, which may calculate that the White House will **not** counter their moves elsewhere in the world during such **domestic turbulence**, especially on the eve of an election, former military and Pentagon officials told me. From Russia, President Vladimir **Putin** could dig **deeper** into Ukraine, meddle in unstable **Belarus**, or **test** the strength of the **Baltic states** to resist. From China, President **Xi** Jinping could further threaten **Taiwan**, exert its claim to islands in the **S**outh **C**hina **S**ea by deploying equipment or personnel, or take more draconian actions in **H**ong **K**ong. Both countries have moved steadily to deepen their **presence** and **influence** across Asia and deep into the **Mid**dle **East**—with its access to the **Mediterranean** and the West. For Moscow and Beijing, overt challenges would be a big bet, especially with an erratic and sometimes reckless President (currently on steroids) in the White House. Yet both countries will also understand that the American public has little appetite for more trauma, the military and security officials said. “I’m sure that **foreign adversaries’** intelligence services have their collection systems turned up **high** so that they understand exactly how **disruptive** this pandemic is on our **national-security structure**,” the former C.I.A. director John Brennan said on CNN this week. **No**rth **Ko**rea and **Iran** may also try to **exploit** the moment, although both have fewer capabilities than Russia or China. Tehran is still smarting from the U.S. assassination, in January, of General Qassem Suleimani, the head of its élite Quds Force, a wing of the Revolutionary Guards, which supports several militias that have attacked U.S. troops in Iraq and Lebanon. “I suspect Iran is not done seeking revenge for the killing of Suleimani,” Lute told me. Tehran’s strength is in the proxy forces it arms, aids, and often directs across the Middle East, particularly Lebanon, Iraq, and Yemen. Since Suleimani’s death, attacks by the Popular Mobilization Forces on U.S. troops and the American Embassy in Iraq have steadily escalated; the P.M.F., backed and sometimes directed by Iran, is the umbrella for some sixty predominantly Shiite militias that operate in separate brigades. Last month, the campaign sparked a diplomatic crisis when Secretary of State Mike Pompeo warned the Iraqi government that the United States would close its Embassy in Baghdad—one of the largest American diplomatic facilities in the world—if the government did not prevent the militias from firing on the U.S. compound and American troops based elsewhere in Iraq. “Our global deterrence at the high end—nuclear and conventional deterrence in Europe, Asia, and the Gulf—will not be tested,” Lute said. “But there may be challenges at **lower levels** through **cyber** or by **proxies**.”

### Regulation cp

#### The United States federal government should substantially increase regulations on information and technology companies whose market capitalization exceeds $400 billion, with the aim of preventing unilateral exclusion.

#### Increased scrutiny of tech companies solves without linking to innovation or politics

Beaupre ’20 [Jacob; Associate @ Nicolaides Fink Thorpe Michaelides Sullivan LLP, JD @ DePaul University College of Law; “Big Is Not Always Bad: The Misuse of Antitrust Law to Break up Big Tech Companies,” *DePaul Business & Commercial Law Journal* 18(1), p. 25-48; AS]

IV. CONCLUSION

The big four technology companies should not be broken up under antitrust law. Antitrust law has an uneasy fit with internet-based businesses because is difficult to discern how to judge when an internet company has become a monopoly since the internet is so vast, changes so quickly, and has many sectors to it. The internet's nature is disruptive and because of the pace of technological change, it is important that antitrust policy take into account how breaking up an internet company may have negative effects on the American economy and on the development of technology.

Businesses who create the best products and do the most research should not be interfered with so long as the companies are not stifling competition and are not monopolies under the legal definitions. Certainly, antitrust law could be applied if Google hypothetically bought Facebook, Netflix, and Twitter since Google would control an outsized market share and would have an intent to monopolize the internet. But this is not what is occurring at this juncture. The big four technology companies record profits and are indisputably large and powerful corporations. Nevertheless, antitrust law should not be applied because the whims of the populist mob do not like tech companies' size and influence.

It is rational to worry about Big Tech's outsized influence on the American economy. However, simply targeting the big four tech companies because of their record earnings and increasing size is counter to the intent of the antitrust acts. If those feel that these companies have too much unchecked power, policymakers and officials should consider regulatory action. There are good and well-reasoned arguments for regulating these tech giants given the recent string of controversies regarding data privacy, but antitrust law is not the avenue to check tech giants' power. The antitrust laws cannot be used simply to satisfy the populist furor over corporate earnings and power, as the antitrust acts only apply if a company is stifling or intending to stifle competition and innovation. Regulatory actions or new legislation policing data use and privacy, cybersecurity, foreign interference in elections, and other issues are a better fit than simply breaking up an entire large business.

Right now, consumers are receiving great benefits because of the big four tech companies' dominance. Consumers have a near limited array of options on the internet and there is no shortage of innovation. With new issues arising as a result from changing pace of technology and the economy, the American legal system should let the market run its course, albeit with some regulation on the industry, unless these tech giants begin to take drastic steps to monopolize and engage in predatory behavior. The populism behind these arguments to break up the tech giants is not grounded in antitrust law nor the policy behind it.

## Innovation

#### Innovation is high

#### Overall innovation – BUT big firms are driving that innovation

Michael Spence & James Manyika 21—Winner of the 2001 Nobel Prize in Economics, Philip H. Knight Professor, and Dean Emeritus at Stanford University's Graduate School of Business; Chair and Director of the McKinsey Global Institute. ("A Better Boom: How to Capture the Pandemic’s Productivity Potential," July/August 2021, from Foreign Affairs, https://www.foreignaffairs.com/articles/united-states/2021-06-22/better-boom)

Future gains in productivity, even those that boost overall growth, are likely to be uneven. We analyzed metrics that have the potential to unleash future productivity growth—such as research-and-development spending, revenue, capital expenditures (including digital expenses), and mergers and acquisitions—and found that especially in the United States, a small number of large superstar firms accounted for a disproportionately large share of the activity in all these categories. From the third quarter of 2019 to the third quarter of 2020, U.S. superstars (defined as the top ten percent of firms by profit) saw much shallower declines in capital expenditures and revenue than did other companies. During the same period, U.S. superstars spent $2.6 billion more on R & D than they did the previous year, while all other firms spent just $1.4 billion more.

#### Leadership is high

AFP1 21 (Associated Foreign Press, Citing a report from the Information Technology and Innovation Fund, “US leading race in artificial intelligence, China rising, EU lagging: survey”, https://www.euractiv.com/section/china/news/us-leading-race-in-artificial-intelligence-china-rising-eu-lagging-survey/)

The United States is leading rivals in development and use of artificial intelligence while China is rising quickly and European Union is lagging, a research report showed Monday (25 January). The study by the Information Technology and Innovation Foundation assessed AI using 30 separate metrics including human talent, research activity, commercial development and investment in hardware and software. The United States leads, with an overall score of 44.6 points on a 100-point scale, followed by China with 32 and the European Union with 23.3, the report based on 2020 data found. The researchers found the US leading in key areas such as investment in startups and research and development funding. But China has made strides in several areas and last year had more of the world’s 500 most powerful supercomputers than any other nation — 214, compared with 113 for the US and 91 for the EU. “The Chinese government has made AI a top priority and the results are showing,” said Daniel Castro, director of the think tank’s Center for Data Innovation and lead author of the report. “The United States and European Union need to pay attention to what China is doing and respond, because nations that lead in the development and use of AI will shape its future and significantly improve their economic competitiveness, while those that fall behind risk losing competitiveness in key industries.” The EU lagged notably in venture capital and private equity funding, while faring better in terms of research papers published. The report found China published some 24,929 AI research papers in 2018, the latest year for which data was available, to 20,418 for the European Union and 16,233 for the United States. But it said that “average US research quality is still higher than that of China and the European Union.” The survey also concluded that the United States “is still the world leader in designing chips for AI systems.” To remain competitive, the report said, Europe needs to boost research tax incentives, and expand public research institutes working on AI. For the United States to maintain its lead, it must boost support for AI research and deployment, and step up efforts to develop AI talent domestically while attracting top talent from around the world.

#### That’s Specifically true for AI but because of of big tech

McGee 21 (Patrick, FT’s San Francisco correspondent covering Apple and US technology. He was previously in Frankfurt, writing about the Volkswagen scandal and the challenge to German carmakers from electric vehicles and self-driving tech. He joined the Financial Times in 2013 to cover Asian markets from Hong Kong. He was previously a bond reporter at the Wall Street Journal in New York. He has a Master's in Global Diplomacy from Soas, University of London, and a degree in religious studies from the University of Toronto. “Silicon Valley reboots its relationship with the US military”, https://www.ft.com/content/541f0a02-ea27-43a4-b554-96048c40040d)

But for all the headlines suggesting that Big Tech is shunning work with the military, major deals continue.

Earlier this year, Microsoft won a 10-year, $22bn contract to supply 120,000 close-combat US soldiers with augmented reality headsets. In 2019, it was awarded a $10bn cloud computing contract for the Pentagon that many assumed was going to Amazon, which had also been an enthusiastic bidder.

Brandon Tseng, co-founder of Shield AI — a start-up helping the Pentagon build unmanned systems for conflict zones — says that, for every example of a Google stepping back, there is a Microsoft stepping in. “It’s a myth that talented engineers don’t want to work with the military,” claims Tseng, a former Navy Seal. “We’re close to 200 employees now, doubling year-to-year, and there’s tons of inbound interest . . . By and large, you find an enthusiastic workforce interested in helping the government solve these problems.”

Shield AI is among the companies thriving thanks to their unabashed support for the defence sector. Others include Palantir, the big data group co-founded by Peter Thiel that is now worth $40bn, and Anduril, which builds tech for border surveillance.

And the success of these groups partly reflects how the US Department of Defense is adapting to the tech culture — all too aware that its rigid hierarchies and traditions are no match for tapping in to private companies’ software-first approach to innovation.

“What you’re seeing is a trend of the US government embracing individuals that have come up in Silicon Valley companies,” says Darron Makrokanis, senior vice-president D2iQ, a cloud management start-up that helped the Air Force shift to remote working during the pandemic.

America’s tech sector has long been intertwined with the military, ever since the US government became a huge spender on early semiconductors and other expensive equipment that lacked a commercial market. Historian Margaret O’Mara, a professor at the University of Washington, has written that “whether their employees realise it or not, today’s tech giants all contain some defence-industry DNA”.

“Silicon Valley traces its origins to the Department of Defense and the aerospace and defence industry,” explains Yll Bajraktari, executive director of the National Security Commission on Artificial Intelligence, an independent group formed to make recommendations to Congress and the president.

#### But the aff trades off - Anti-trust enforcement hamstrings military AI acquisition

Foster & Arnold 20 (Dakota Foster, Visiting Researcher at Georgetown’s Center for Security and Emerging Technology (CSET). She is a graduate student in the Department of War Studies at King’s College London, where she is studying the Third Offset Strategy and the national security implications of changing innovation patterns between the public and private sectors. Previously, she has conducted research on terrorism and U.S. national security policy for the U.S. military, the House Foreign Affairs Committee, and the Washington Institute. She holds a B.A. from Amherst College and is an incoming student at the University of Oxford. Zachary Arnold, Research Fellow at Georgetown’s Center for Security and Emerging Technology (CSET), where he focuses on AI investment flows and workforce trends. His writing has been published in the Wall Street Journal, MIT Technology Review, Defense One and leading law reviews. Before joining CSET, Zach was an associate at Latham & Watkins, a judicial clerk on the United States Court of Appeals for the Fifth Circuit and a researcher and producer of documentary films. He received a J.D. from Yale Law School, where he was an editor of the Yale Law Journal, and an A.B. (summa cum laude) in Social Studies from Harvard University, “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI”)

In the early 1980s, Steve Jobs assumed leadership of the group of engineers and designers tasked with developing the Apple Macintosh computer. Despite Apple’s rapid growth at the time, Jobs refused to expand the size of his team. Jobs had a rule: there could never be more than 100 people working on the Mac.1 He believed large organizations were “bureaucratic and ineffective,”2 hindering innovation. In fact, he once proposed breaking the different divisions of Apple into separate corporations so as to retain the features of smaller companies.3

Today, lawmakers and policymakers, rather than corporate leaders, contemplate breaking up Apple and other tech giants. Rising concerns about the concentration of economic and political power, anticompetitive behavior, and consumer protection have elevated antitrust enforcement in the national discourse. As of early 2020, Apple, Amazon, Google, Microsoft, and Facebook had a combined value of $5.5 trillion4—an amount equivalent to the combined value of the S&P 500’s bottom 282 companies5—and dominated sectors including cloud computing, digital advertising, and internet search.

Some politicians and users argue that the scale and market power of these companies lets them collect and exploit massive quantities of personal data with minimal oversight. In turn, tech giants insist a break-up will make the United States less secure and competitive.6 As Alphabet CEO Sundar Pichai has stated, “There are many countries around the world which aspire to be the next Silicon Valley. And they are supporting their companies, too. So we have to balance both. This doesn’t mean you don’t scrutinize large companies. But you have to balance it with the fact that you want big, successful companies as well.”7 Some policymakers agree. Senator Mark Warner (D-VA) recently stated that he was not ready to support a break-up, as companies like Facebook and Google might be “replaced by an Alibaba, Baidu or Tencent model, where there is no ability to have...controls.”8 Others disagree, noting vigorous federal enforcement of antitrust laws against tech giants such as IBM, AT&T, and Xerox in the 1970s and 1980s. These companies remained successful in spite of regulation; some even argue federal enforcement helped establish the modem market, online networking, and new, innovative companies like CompuServe and AOL.

Understanding AI Innovation

The debate over breaking up Big Tech has profound national security implications. The Pentagon maintains that the innovation and acquisition of AI technologies is critical to America’s national security.17 Defense Secretary Mark Esper recently called AI the most significant emerging technology for warfare, predicting that “whoever masters it first will dominate on the battlefield for many, many, many years.”18 Although others within and beyond the Pentagon stress the limits of AI,19 its potential is widely acknowledged.20 In order to develop and deploy new, strategically decisive AI tools, the Pentagon must rely on an AI innovation ecosystem in which large private-sector companies play a critical role. At the same time, the Department of Justice, the Federal Trade Commission, Congress, and state attorneys general have targeted many of the private sector’s largest and most innovative AI companies in ongoing antitrust probes.21

To be sure, AI innovations take many forms, not all of which hinge on Big Tech. For example, researchers across academia, government, and the private sector continue to push the conceptual bounds of AI, developing new theories and mathematical frameworks that could yield significant technical and commercial benefits down the road. In other cases, AI advances through smaller, practical steps that indirectly support its development—for example, as companies develop more efficient ways to clean and sort data for use in machine learning models.

While important, these theoretical efforts and incremental AI innovations are beyond our scope. We instead focus on AI tools and methods resulting from the integration of basic research with systems of production and deployment, and those with practical, foreseeable implications for AI end users. We assume innovations of this sort would most directly and significantly affect national security and strategic competition.

Today, the private sector dominates this domain of AI innovation. Other actors, including government funders and academic researchers, play an important role—especially in basic research—but at the application stage, the private sector generally consolidates critical inputs of data, computing power, and human capital, then applies them to real-world needs. In some cases, such as with Project Maven—where Google built AI-enabled image recognition programs for the Pentagon—the Pentagon is the customer; more often, AI products and conceptual breakthroughs developed by the private sector, from autonomous vehicles to image and speech recognition platforms, are (or could be) adapted for national security use.

Because most U.S. AI innovation currently occurs in the private sector, and at least some of this innovation pertains to the Pentagon, the Pentagon needs the private sector.22 Large tech companies, from Google, Apple and Amazon to slightly lower-profile giants such as IBM, Intel and Qualcomm, form the foundation of the private-sector AI innovation ecosystem.i For example, Google, Facebook, Microsoft, Apple, and Amazonii generate the most AI patents with a “significant competitive impact” worldwide, according to analysis by economic consultancy EconSight.23 The McKinsey Global Institute reports that large, digitally oriented tech companies worldwide spent $20-$30 billion on AI in 2016, 90 percent of which went toward R&D and deployment; for comparison, the Pentagon plans to spend $4 billion on AI and machine learning R&D in FY2020.24 Private-sector AI companies are especially dominant in applied research and experimental development.25 AI innovation would presumably continue in some form without Big Tech, but the data indicates that breaking up the largest tech companies would fundamentally change the broader AI innovation ecosystem. Such action would create unpredictable, but likely significant, trickle-down effects on AI applications in specific domains, including national security.

Shifting Incentives

In order to use AI for America’s strategic advantage, the Pentagon requires more than an innovative private sector. It must induce private companies to build defense-relevant AI products, acquire those AI innovations through procurement, and prevent those same products from diffusing to U.S. adversaries. In other technological domains, such as aerospace, the Pentagon has long relied on the private sector for procurement and holds significant leverage over industry. Its sheer scale and budget make it the defense industry’s primary consumer. In 2017, for example, 70 percent of Lockheed Martin’s sales went to the U.S. federal government.26 Historically, this financial leverage has incentivized companies to meet the Pentagon’s demands and build to its requirements.27

But these incentives do not exist with AI: while AI is a priority for the Pentagon, the Pentagon is not a priority for AI companies. In general, the largest U.S. tech companies do not rely on government contracts and have relatively little need for Pentagon funding.28 As a result, their research and products do not reflect defense priorities, and they have relatively little incentive to engage deeply in the government procurement process. Even in a future, AI-centric world, we expect large-scale, commercially oriented tech companies to play a critical role in AI innovation, and the Pentagon to remain a minor customer. As such, the Pentagon may rely on other firms —from defense-focused startups to traditional defense contractors—to translate general AI advances into defense-relevant products.

The Pentagon’s access to these cutting-edge, national security-relevant AI products hinges on private sector cooperation. This willingness will drive whether it sells to the Pentagon, shapes its technologies in accordance with DOD priorities, and complies with DOD terms of acquisition—including, potentially, by safeguarding the same products from U.S. competitors and adversaries.29 We need to understand how antitrust enforcement might affect these dynamics, as well as private-sector innovation more broadly.

#### Eliminating exclusionary conduct powerbombs tech

Blask (Ari, Associate at Willkie Farr & Gallagher LLP “Undermining Innovation?”, https://www.cato.org/regulation/summer-2021/undermining-innovation)

Members of the Biden administration and prominent Democrats in Congress such as Elizabeth Warren and Amy Klobuchar are advocating that expanding antitrust be a domestic policy priority. They argue that large tech companies like Amazon, Google, and Airbnb engage in business practices that exclude potential competitors from the marketplace and that current legal doctrines governing exclusionary conduct are insufficient to protect against these harms. These leaders draw on scholarship that calls for courts to consider how a firm’s practices affect “competitive process” rather than just focusing on consumer welfare as measured by prices and output.

There is much to criticize about government meddling in the tech market. Tech has spurred productivity growth and created a bounty of new products in recent decades. Many of these products are free and digitization has by and large reduced costs compared to non‐​internet alternatives or predecessors. Arguments that the U.S. tech sector is not competitive disregard changes in prices across different economic sectors, while government regulatory barriers and labor intensiveness explain high prices in areas like education and housing.

Nonetheless, calls to expand antitrust are growing. One thrust is to promote digital startup competition. In recent years, competitive process scholars like Columbia’s Tim Wu and Lina Kahn (now appointees of the Biden administration), Yale’s Fiona Scott Morton, and former Federal Trade Commission economist Jonathan Baker have written books and articles suggesting that judicial emphasis on price and output in exclusionary conduct cases is particularly ill suited to the digital economy. They propose that courts alter how they weigh procompetitive and anticompetitive effects when evaluating vertical integration and vertical contractual restraints. They also suggest removing the below‐​cost and recoupment requirements for predatory pricing exclusion claims.

The competitive process school’s proposed reforms should be rejected because current law adequately prohibits unjustified dominant firm exclusionary conduct without unduly protecting inefficient competitors. The proposed changes would not improve the ability of courts to sanction unjustified exclusionary conduct that harms startups. Instead, the reforms might prevent dominant firms from achieving efficient scale and discourage new firms from aggressively pursuing price and quality competitiveness.

#### Zero empirical evidence supports the link between dominant platforms and reduced innovation

Patrick F. Todd 20, Trainee Solicitor, Herbert Smith Freehills LLP, London, 3/3/20, ““You don’t get to be the umpire and have a team”: should we regulate the activities of digital platforms in neighboring markets?,” <https://truthonthemarket.com/2020/03/03/you-dont-get-to-be-the-umpire-and-have-a-team-should-we-regulate-the-activities-of-digital-platforms-in-neighboring-markets/>

2. Widespread harm in adjacent markets

To ban platform owners from leveraging anti- and pro-competitively, one would expect there to be cogent evidence of harm to competition across a multitude of adjacent markets that depend on the platforms for access to consumers. However, as Feng Zhu and Qihong Liu note, there is a dearth of empirical evidence on the effects of platform owners’ entry into complementary markets. Even studies that support the proposition that such entry dampens or skews innovation incentives of firms in adjacent markets conclude that the welfare effects are ambiguous, and that consumers may actually be better off (see e.g. here and here). Other studies show that third-party producers can benefit from platform entry into adjacent markets (see e.g. here and here). It is therefore clear that this criterion, which should also be a prerequisite to imposing blanket regulation to control the behavior of platform owners, has not been satisfied.

#### Leadership’s irrelevant.

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

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

#### No emerging tech impact.

Sechser 19 – Todd S. Sechser, Public Policy Professor at the University of Virginia. Neil Narang, Political Science Professor at the University of California, Santa Barbara. Caitlin Talmadge, Security Studies Professor at Georgetown University. [Emerging technologies and strategic stability in peacetime, crisis, and war, Journal of Strategic Studies, 42(6), Taylor and Francis]

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

#### No impact to slow growth – empirically denied and inevitable in long term

Duprat 21. Marie-Hélène Duprat - Senior Advisor to the Chief Economist at Societe Generale. “COVID-19 and Secular Stagnation” https://www.societegenerale.com/sites/default/files/documents/2021-01/COVID-19-and-Secular-Stagnation-EN.pdf

Despite extraordinary fiscal and monetary policy support, the COVID-19 pandemic, along with the measures taken to contain it—including unprecedented lockdowns and economic shutdown—has plunged the world economy into the deepest recession in modern history. In addition to its toll on public health and momentous short-term output losses, **the pandemic has already left an indelible mark on the global economy**. This paper suggests that, absent a more audacious policy action plan, the COVID-19 shock will leave deep and lasting scars on the global economy by exacerbating preexisting vulnerabilities, eroding potential output, and strengthening the forces of “secular stagnation”. **This is** partly **because of an anticipated long-term shift in behaviours and beliefs**. Indeed, the COVID-19 shock **is likely to trigger a structural increase in risk aversion** in the private sector **that will operate both to raise precautionary household savings** **and to reduce business investments**, **leading to a chronic deficiency of aggregate demand that will prevent economies from fulfilling their potential**. Moreover, the pandemic is giving a tremendous boost to the digital transition, which will contribute to widening social inequalities, themselves a force of secular stagnation in that they lead to the increased propensity of populations to save.

# 2NC

## States

#### 1---USFG

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

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

united states government- noun

the executive and legislative and judicial branches of the federal government of the **U**nited **S**tates

#### CP avoids politics but sequencing is key

**Gluck 11** (Abbe R. Gluck, Associate Professor of Law and Milton Handler Fellow, Columbia Law School, Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond, 121 Yale L.J. 534, y2k)

C. Federalism as a Tool of Federal "**Field Claiming**" (or Encroachment)

There also might be a more instrumental story to tell, one in which the states are **relied upon** not for some reason related to the traditional federalism values (as they are to some extent when Congress nationalizes state experiments or looks to state bureaucracies as partners in federal statutory entrenchment) but rather one in which the states are **utilized** as more direct vehicles of federal **regulatory aggrandizement**. Specifically, I want to highlight the possibility that Congress might design statutes around **state-based implementation** for the purpose of gradual field entry into areas traditionally dominated by state law. A federal statute that marks new legislative terrain for the federal government but relies - **at least in the beginning** - on the **states** to implement it might be a way for the federal government to "claim the field" as one suitable for federal regulation, but at the same time rely on **state expertise** and state **political cover** while the federal government gets up to speed.

Statutes like these have **political benefits**. Most obviously, they allow **Congress** to leave the initial extent of the federal role **vague**, a strategy that might make the **intrusion** more **acceptable** to legislators who otherwise would resist these moves. To be sure, the fact that the federal government offers states the chance to implement new federal statutes does not diminish the reach of federal legislative authority. But by retaining the states in the **lead role** for [\*573] **implementation**, such statutes might be more **politically palatable** to those who generally **resist** federal aggrandizement or prefer "smaller" government or local variation.

Giving states **the lead role** in implementation also might assuage concerns of legislators who are suspicious of, or **politically opposed** to, the current executive branch's policy agenda. Particularly in times of **divided** government, some members of Congress might **trust** their home-state **counterparts** more than the **administrative appointees** of the **President** to **fill in** the interstices of new federal programs. Work in the **political science** realm has, indeed, documented an increase in such **delegations** toward the **states** and away from the federal government in times of **divided government**. Others have documented how Southern congressmen pushed early implementation of federal welfare programs through the states to preserve the political economy of the region. Seen in this light, varied state implementation - and in particular, allowing for less aggressive implementation by some states - might, in fact, be a necessary part of the political deal to get some federal statutes passed in the first place. That is, the possibility of **state-based dissent** that often is described as a pathology in traditional federalism theory may actually be a beneficial **safety valve** that, on occasion, makes new federal legislation possible.

#### No pre-emption:

#### 1---Courts uphold state antitrust laws

**Schmidt 20** (Derek Schmidt, Attorney General for the State of Kansas, Kansas Antitrust Developments in the 21st Century: A Perspective from the Attorney General's Office, 68 U. Kan. L. Rev. 875, y2k)

VI. A CONTINUED ROLE FOR **STATE ANTITRUST** IN THE 21ST CENTURY

Some might question the need for state antitrust laws when there are federal laws, or the need for Attorney General enforcement when there are private actions, but there are many reasons Kansas antitrust law and actions by the Kansas Attorney General are important. For example, Kansas antitrust law specifically protects Kansans. While many antitrust issues in today's global society have a national or international effect, some anticompetitive actions are still limited to a small geographic area. Or, even if it has a broad effect, the action may have a particularly detrimental effect on a small localized area. That is where Kansas antitrust law, as well as the enforcement authority of the Kansas Attorney General, are particularly important. Even in multistate cases brought in federal court, Kansas legal authority and the involvement of the Kansas Attorney General ensure that the interests of Kansas citizens and the State of Kansas are protected.

[\*919] A. **Not** Preempted by Federal Law

The Supremacy Clause of the Constitution provides that federal law is the "supreme Law of the Land," And the Tenth Amendment designates that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." State antitrust laws are **not** preempted by federal antitrust laws. Rather "Congress intended the federal antitrust laws to **supplement**, not displace, state antitrust remedies." State antitrust laws have also been **upheld** in the face of **other federal enforcement.** One example is the U.S. Supreme Court case Oneok v. Learjet discussed previously. One of the arguments made by the State in its amicus filing was that the harmonization requirement in the KRTA and other states' antitrust laws is evidence that state antitrust laws are consistent with the goals and purposes of federal antitrust laws. In *Oneok*, the Court affirmed that "[s]tates have a long history of providing **common-law** and **statutory remedies** against **monopolies** and **unfair business practices"** and have **a "long-recognized** power to **regulate combinations** in **restraint of trade."**

#### 2---Preemption doesn’t assume Gorsuch and Kavanaugh

**Sykes 19** (Federal Preemption: A Legal Primer, 7-23, Congressional Research Service, <https://fas.org/sgp/crs/misc/R45825.pdf>, y2k)

The Court’s **recent additions** may also presage a **narrowing** of obstacle **preemption doctrine, as** some commentators have characterized Justices **Gorsuch** and **Kavanaugh** as **committed textualists**.259 Indeed, the Court’s 2019 decision in Virginia Uranium, Inc. v. Warren suggests that Justices **Gorsuch** and **Kavanaugh** may share Justice Thomas’s **skepticism** toward obstacle **preemption** arguments.260 In that case, Justice Gorsuch authored an opinion joined by Justices Thomas and Kavanaugh in which he rejected the proposition that implied preemption analysis should appeal to “**abstract** and **unenacted** legislative desires” not reflected in a **statute’s text.**261 While Justice Gorsuch did not explicitly endorse a wholesale repudiation of what he characterized as the “purposes-and-objectives branch of conflict preemption,” he emphasized that any **ev**idence of Congress’s preemptive purpose must be sought in **a statute’s text** and structure.262

#### 4---State courts decisions are final over state statutes---no federal rollback

**Frost 15** (Amanda Frost, Professor of Law, American University Washington College of Law, "Inferiority complex: Should state courts follow lower federal court precedent on the meaning of federal law." Vand. L. Rev. 68 (2015): 53, y2k)

Similar foundational questions were raised seventy-five years ago in ***Erie*** Railroad v. Tompkins, 11 when the **Supreme Court** overruled Swift v. Tyson12 and held that **federal courts** must follow **state law** as articulated by **a state’s highest court**. The Court explained that federal courts undermined state sovereignty by failing to treat state courts’ views on state law as controlling.13 Although *Erie* focused on the federal courts’ obligation to adopt state common law, the decision confirmed that **federal courts** must follow **state courts’ interpretations** of **state** positive **law** as well.14 The bottom line after Erie is that **state courts have the final word on the meaning of state law**

#### 5- Federal law is a floor, not a ceiling---states have authority to prohibit anti-competitive conduct on their own under both federal and state law using separate standards---CP avoids the link to overstretch

Philip J. Weiser 20, Colorado Attorney General. Hatfield Professor of Law, University of Colorado. "The Enduring Promise of Antitrust" https://coag.gov/app/uploads/2020/04/Antitrust-Speech-Loyola-U.-Chicago-footnotes.pdf

During the 1970s, Congress began to develop a range of “cooperative federalism” regulatory programs. Under such programs, Congress authorizes state enforcement of federal law, allowing the federal government to set a floor for enforcement, but giving states additional authority to tailor standards as well as pick up any slack in enforcement (and it is critical to note that, given constrained federal resources, that slack may be the product of workload). By instituting such a model, Congress adopted a hedging strategy—ensuring a base level of uniformity while allowing for appropriate experimentation.

The environmental laws provide the classic example of cooperative federalism in action, with the Clean Air Act being a clear case in point.3 Under the Clean Air Act’s model, the EPA authorizes state agencies to address air pollution using a variety of tools, provided that they ensure a basic level of air quality. Where state agencies decide to go above the level specified by the EPA, they are permitted to do so.4 Following this precedent, both telecommunications regulation and health care policy later adopted a cooperative federalism architecture, blending state and federal authority and calling on state agencies to develop and enforce federal regulatory standards.

Antitrust law operates in a functionally similar manner. In 1976, in adopting the Hart Scott Rodino Antitrust Improvements Act, Congress embraced the ability of State AGs to enforce federal antitrust law on behalf of their States, using what is called “parens patriae” authority.5 The theory of this delegation of authority, like other cooperative federalism programs, is two-fold: (1) states may be better positioned to know of competitive issues in their jurisdictions; and (2) states may have a greater willingness to take action and have the ability to collect damages on behalf of their citizens, thereby further advancing the goals of antitrust law. As the Supreme Court put it, the role of states in antitrust enforcement “was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition.”6

One of the questions inherent in a cooperative federalism framework is whether the federal government has the authority to prevent states from going further than the federal government where, in their view, local conditions warrant. In the environmental arena, the EPA has the authority to ensure a minimum level of enforcement, but not to prevent states from taking additional action. In the antirust arena, the situation is similar: the federal government can take action to ensure a basic level of enforcement, but it does not have the power to prevent states from going further, under federal or state law, to stop anti-competitive conduct.7

For an example of parallel federal and state action, consider the Microsoft case.8 In that case, the federal government ultimately decided—after a remand on the remedies issue by the D.C. Circuit Court of Appeals—on a regulatory remedy and declined to pursue structural relief. A number of states who were part of this litigation took a different view and proceeded to challenge the absence of divestiture. As this case was litigated and ultimately decided, the D.C. Circuit made clear that the States have the requisite authority to pursue a different view from the federal government if they choose to do so.

The opposite approach—empowering the federal government to bar states from antitrust enforcement whenever it so chooses—would undermine the architecture of cooperative federalism and hurt consumers in states where State AGs pick up the slack in federal enforcement by bringing additional resources to bear and by applying their local expertise. Consider, for example, the case of a recent merger in Colorado Springs between DaVita’s clinical network and UnitedHealth Group’s Medicare Advantage insurance product. 10 In this case, UnitedHealth consummated this merger after its market share declined from around 75% to around 50%, owing to the emergence of a disruptive entrant, Humana. Humana emerged as a rival after building its relationship with DaVita’s clinics, which referred patients to it. In the wake of the merger, however, Humana faced the prospect of losing access to a critical resource.

The Federal Trade Commission reviewed the UnitedHealth/DaVita merger and declined to take action in the Colorado Springs market. In Colorado, however, we were concerned about the prospect of UnitedHealth using control over DaVita’s clinics to re-establish its dominant position in the Medicare Advantage market, leading to higher prices, less choice, and lower quality offerings to patients. By taking action in this case, separate and apart from the FTC, we were able to protect Colorado consumers. And rather than protest our action, the FTC respected our authority. Indeed, two Commissioners wrote separately to highlight the valuable role State AGs play in enforcing antitrust law.11

The impact of federal antitrust law on state law can vary, depending on whether state law permits or requires conduct that is illegal under federal antitrust law, or, conversely, prohibits conduct that is permitted under federal antitrust law.

With respect to the former, courts have uniformly held that a state statute can be invalidated only if it "mandates or authorizes conduct that necessarily constitutes a violation of [federal] antitrust laws in all cases, or if it places irresistible pressure on a private party to violate the antitrust laws in order to comply with the statute." n159Link to the text of the note For example, in Northern Securities Co. v. United States, n160Link to the text of the note the Supreme Court addressed a state statute that permitted a practice prohibited under federal antitrust law. A holding company, which controlled competing railways, was held to violate the Sherman Act. The Court considered whether the holding company's lawful formation under a New Jersey statute meant that application of the Sherman Act would impermissibly infringe state sovereignty. In holding that federal antitrust law applied, the Supreme Court stated, "It cannot be said that any state may give a corporation, created under its laws, authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress" and that "[e]very corporation created by a state is necessarily subject to the supreme law of the land." n161Link to the text of the note

In Exxon Corp. v. Governor of Maryland, n162Link to the text of the note the Supreme Court addressed the converse question: whether a state statute could prohibit activity that federal antitrust law permits. In Exxon, the state of Maryland had enacted a statute that required oil companies to extend price reductions uniformly to all their retail gasoline dealers. This law allegedly conflicted with Section 2(b) of the Robinson-Patman Act, n163Link to the text of the note which permits price discrimination under certain conditions. The Supreme Court rejected the claim that the permissive effect of Section 2(b) could not be limited by state law. n164Link to the text of the note The Court held that Congress, in enacting Section 2(b), merely set a limit on the availability of the federal remedy, leaving the states free to fashion their own legislation in an area that the federal law did not reach. n165Link to the text of the note

Courts have also upheld state antitrust laws that prohibit a broader range of conduct than the federal antitrust laws. n166Link to the text of the note For example, a provision in Ohio's Valentine Act that expressly precludes the application of any limitations period to conduct covered by that antitrust statute has been upheld against a claim of preemption by the Clayton Act's four-year limitations period. n167Link to the text of the note

#### No commerce clause challenges

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

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

#### Multistate suits are seen as unformit---causes a single and comprehensive settlement with all states

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

The experience of Sears and other companies subject to litigation led them to realize quickly that settlements addressing the **SAGs’ concerns** while preserving the ability of corporations to continue to operate "are often **preferable** to years of litigation, bad publicity, and regulatory attention."64 Most multistate settlements contain a clause specifying that the signing party does not admit wrongdoing, and that the company chose to settle "in order to cooperate with the States, to ensure that its customers are treated fairly, and to avoid expensive and potentially protracted litigation."65 **Settling litigation** in such a way, **even if** it imposes **regulatory requirements** and **monetary payments**, reduces the sort of **uncertainty** that makes shareholders **nervous**. Further, when sued, corporate defendants typically want "**a single, comprehensive, predictable settlement**" resolving the cases.66 As SAGs became more **frequent** and **successful** litigators, the targets of this litigation have pushed for **global settlements** including as **many states** as possible. Even if they deny the allegations underlying the litigation, they see this "as an **efficient** and **effective way** to deal with a matter comprehensively."67 In certain cases, the terms and reach of a global settlement may even advantage the involved firms at the expense of their competitors, a dynamic explained at length by Michael Greve and other authors in the context of the tobacco settlement.68 That both **SAGs** and **corporate defendants** alike have well understood the **efficiencies** of multistate litigation is an important reason why the use of this tool has increased. It is also likely one of the reasons why a greater number of states have joined such settlements over time, as indicated by Figure 3.3 earlier in this chapter.

#### This applies to the aff---the fed has to prosecute conducts that occur nationally---1AC proves there’s no risk

**HLR 20.** Harvard Law Review. 6-10-20. “Antitrust Federalism, Preemption, and Judge-Made Law" https://harvardlawreview.org/2020/06/antitrust-federalism-preemption-and-judge-made-law/

Like the patchwork regime critique, the overdeterrence critique is weakened if the federal regime has failed to achieve proper balancing. Many antitrust regimes around the globe adopt different balances than the United States does. The European Union, for example, differs from the United States on remedial structure, the standard for illegal unilateral conduct, and market definition, among other issues.68 Moreover, **many scholars argue** **that the U.S. antitrust balance is off** **and that more enforcement is needed**.69 Even if U.S. antitrust policies are getting the balance generally right, **it is unlikely that the federal regime is so finely tuned** **that any added deterrence will destroy the balance.**

#### No patchwork – good is good enough

**Gugliuzza 15** (Paul R. Gugliuzza, Associate Professor, Boston University School of Law, PATENT TROLLS AND PREEMPTION, 101 Va. L. Rev. 1579, y2k)

**State-by-state** regulation of patent enforcement does threaten to impede national uniformity, which was one of the Court's reasons for finding preemption in Bonito Boats. **Yet** it is not as if the **fifty different states take fifty different approaches to unfair competition law**, deceptive trade practices law, or business torts. Many of the new state statutes are also **similar**, condemning "bad faith" assertions of patent infringement. In addition, the uniformity with which the Supreme Court was concerned in Bonito Boats was uniformity in the scope of intellectual property rights. When the Court has been confronted with bodies of state law, such as contract law, that govern intellectual property rights whose scope has already been determined by federal law, **the Court has allowed state law room to operate.**

#### CP establishes a uniform state antitrust law---any solvency deficit applies to the aff because there’s no “perfect” uniformity

**Sandeen 17** (Sharon K. Sandeen, Robins Kaplan LLP Distinguished Professor in Intellectual Property Law and Director of IP Institute, Mitchell Hamline School of Law, THE MYTH OF UNIFORMITY IN IP LAWS, 24 J. Intell. Prop. L. 277, y2k)

All the foregoing rationales for **federal uniformity** seem good **on paper**, but as noted previously, for a variety of **legal** and **practical reasons**, federal uniformity is **difficult** to achieve **even when a detailed federal law is written**. Moreover, the perceived legitimacy of federal law over state law could easily be applied to a wide variety of state laws, such as commercial law, but no one is clamoring to supplant the Uniform Commercial Code with a federal law. In fact, if anything, our system of **federalism** establishes both a **Constitutional** and [\*300] **institutional preference** for the application of **state substantive law** over **federal substantive law.**

While policymakers and lobbyists are apt to trot out the rhetoric of uniformity whenever they wish to enact a new federal law, because the desired uniformity does not always result, it is important to focus on other possible rationales for new federal laws. One such rationale is that a federal law is **needed** to fill a gap that exists in **state law**, for instance the legal vacuum that was created in **unfair competition law** following the Supreme Court's decision in *Erie*. 105 However, in such cases, the gap might **also** be filled by **a uniform state law**, as was the case with the **U**niform **T**rade **S**ecrets **A**ct, 106again raising the important question **why** a federal law would be **better**.

Sometimes a new federal law is justified by changes in technology that require a response that is quicker than either the common law or the drafting and adoption of a uniform law can provide. Both the Digital Millennium Copyright Act 107and the Computer Fraud and Abuse Act 108are examples of this approach, but they also reveal that a rush to enact federal legislation can result in legislation being enacted before all the problems are known. Related to this rationale is the fact that a federal statute (or a uniform state law) can often be used to speed-up or fix the development of common law in a certain area, as was the case with the Uniform Trade Secrets Act. 109

Most arguments in favor of federal uniformity focus on the asserted benefits of uniformity but fail to explore the reasons why Congress does not act to further uniformity in all areas of law. This underscores the weakness of the uniformity argument because it shows that there is no general interest in the uniformity of legal principles, only an interest in federal uniformity with respect to those areas of law over which Congress wishes to assert control. Whether explained as respect for states' rights or an inability to get legislation passed, the simple fact is that the **benefits** of **federal uniformity** are often **not enough** to **motivate** the enactment of a **federal law**, even when there are numerous **conflicting state laws** on the subject. Privacy laws governing the protection of personally identifiable information and rights of publicity laws provide two IP-related [\*301] examples of laws that have been left to the states despite the benefits of federal uniformity.

#### Multistate litigation solves uniformity---even though 50 states act, the litigation occurs in a single jurisdiction

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

State **antitrust** laws and enforcement also encourage **greater consistency in antitrust enforcement** over time by weakening barriers to enforcement from financial, jurisdictional, and political restrictions. First, dual enforcement of antitrust regulations allows access to the resources of both the federal government and state governments. Government agency budgets certainly are not immune to reductions and limitations in times of fiscal difficulty. 54 The DOJ's Antitrust Division announced in 2012 that it planned to close four field offices following the 2013 budget process in an effort to reduce costs. 55 According to Judge Dan Polster, who presides over the United States District Court for the Northern District of Ohio and started his career in the Cleveland field office of the Antitrust Division, closing the field offices will reduce the DOJ's ability to prosecute regional antitrust cases and resolve local price fixing disputes. 56 These cases "really have a direct impact on [the] local economy and people's pocket books," but the DOJ Antitrust Division has turned its focus toward larger domestic and international cases.5 Encouraging **state enforcement** of state and federal antitrust statutes may alleviate concerns about a lack of **regional** enforcement. State **a**ttorneys **g**eneral can **pool** their **resources** for enforcement and even appear **together** as **amici cuiae** to better **inform courts** as to the interests of state consumers. One widespread fear was that states might pool their resources in order to pursue **protectionist litigation** in their mutual favor, and to the disadvantage of a few states.59 In response to this criticism, Congress dramatically **limited** the availability of **multistate actions** "by requiring that any state enforcement action take place 'in any **district court** of the United States **in that State** or in a **State court** that is located in that state and that has **jurisdiction** over the defendant.""'6 Thus, state antitrust enforcement and limited regional pooling enable **greater consistency** in antitrust enforcement even in the

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

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

C. States Both **Lead** and **Initiate Antitrust Litigation**

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

**(Footnote 127 starts)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(Footnote ends)**

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

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

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

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

#### 4---Literature and solvency advocates check

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

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

## case

#### COVID encouraged *more* innovation and productivity growth

Michael Spence & James Manyika 21—Winner of the 2001 Nobel Prize in Economics, Philip H. Knight Professor, and Dean Emeritus at Stanford University's Graduate School of Business; Chair and Director of the McKinsey Global Institute. ("A Better Boom: How to Capture the Pandemic’s Productivity Potential," July/August 2021, from Foreign Affairs, https://www.foreignaffairs.com/articles/united-states/2021-06-22/better-boom)

The pandemic has primed advanced economies for another period of rapid productivity growth. It is too early to say for sure whether such growth will be the product of a virtuous or a vicious cycle, but signs point to the former. Despite uncertainty, stress, and plummeting economic activity in the early days of the COVID-19 crisis, many firms boldly deployed and used new general-purpose technology—especially digital technology—in ways that have driven virtuous productivity gains in the past. In October 2020, we surveyed 900 C-suite executives in various sectors and countries and found that many had digitized their business activities 20 to 25 times as fast as they had previously thought possible. Often, this meant shifting their businesses to online channels, since roughly 60 percent of the firms we surveyed experienced a significant increase in customer demand for online goods and services as a result of the pandemic.

Before the pandemic, e-commerce was forecast to account for less than a quarter of all U.S. retail sales by 2024. But during the first two months of the COVID-19 crisis, e-commerce's share of retail sales more than doubled, from 16 percent to 33 percent. And that growth did not just reflect brick-and-mortar firms setting up shop online for the first time. Firms that were already highly digitized before the pandemic significantly expanded their online capabilities to meet the surge in demand. They also reorganized their operations, including their logistics, to complement what they were doing digitally-for example, by expanding their direct-to-home delivery capabilities.

Businesses also strove to become more efficient and agile. In Europe and North America, nearly half of the respondents to our survey said that they had reduced their operating expenditure as a share of revenue between December 2019 and December 2020. Two-thirds of senior executives said they had increased investment in automation and artificial intelligence, whether to help warehouse and logistics operations cope with higher e-commerce volumes or to enable manufacturing plants to meet surging demand. Many companies used technology to reduce the physical density of their wor

kplaces or to enable contactless service-for instance, by expanding self-checkout in grocery stores and pharmacies and employing online ordering apps for restaurants and hotels. Other businesses, such as meatpacking and poultry plants, accelerated the deployment of robotics to reduce their need for labor. If there was one lesson from the pandemic, it was that digital capability and resilience go hand in hand.

But even as the arrival of vaccines has made it possible to imagine a return to relative normalcy in parts of the developed world, continued digitization and the adoption of other technological innovations promise to deliver still more productivity gains. The largest of these gains—roughly an additional two percentage points per year—could come in the health-care, construction, information technology, retail, pharmaceutical, and banking sectors. In health care, for instance, accelerating the use of telemedicine beyond the pandemic could drive incremental productivity growth for years. According to one recent U.S. poll, 76 percent of patients expressed interest in using telemedicine in the future, and industry experts project that the services for 20 percent of health-care spending could be delivered virtually-up from 11 percent before the pandemic. Other sectors, including automotive, travel, and logistics, show less-but still substantial-potential for productivity growth as a result of more flexible task scheduling, leaner operations, and smarter procurement.

Overall, these innovations and organizational changes could accelerate productivity growth by around one percentage point per year between now and 2024 in the United States and the six large European economies that we analyzed (France, Germany, Italy, Spain, Sweden, and the United Kingdom). This gain would result in a productivity growth rate twice as high as the rate after the 2008 global financial crisis, and in the United States, it would expand per capita GDP by roughly $3,500 by 2024. That would be a stunning outcome, but it will hinge on continued technology adoption by firms and the maintenance of robust demand.

Even more productivity gains could be on the horizon thanks to other advancements. The accelerating revolution in biology, for instance, could transform sectors from health care and agriculture to consumer goods, energy, and materials. Biological innovation has already enabled the rapid development of new vaccines for COVID-19. Equally impressive revolutions in energy could make possible the widespread adoption of solar and wind power, especially in light of recent progress toward better (and cheaper) batteries. Artificial intelligence is also advancing rapidly, but is still a long way from being deployed widely across companies and sectors. When and if that happens, the productivity gains could be enormous.

#### 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.

#### 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.

#### 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.

#### He represents a fringe opinion---most antitrust scholars err neg

Woodcock 19 (Ramsi Woodcock, Assistant Professor, College of Law, and Assistant Professor, Department of Management at Gatton College of Business & Economics, University of Kentucky, Big Ink vs. Bigger Tech, 12-30, <https://truthonthemarket.com/2019/12/30/big-ink-vs-bigger-tech/>, y2k)

My favorite is: “It’s Time to Break Up Facebook.” Unlike the others, it belongs to an Op-Ed, so a bias is appropriate. Not appropriate, however, is the howler, contained in the article’s body, that “a host of legal scholars like Lina Khan, Barry Lynn and Ganesh Sitaraman are plotting a way forward” toward breakup. Lina Khan has never held an academic appointment. Barry Lynn does not even have a law degree. And Ganesh Sitaraman’s academic specialty is constitutional law, not antitrust. But editors let it through anyway.

As this unguarded moment shows, the press has treated these and other members of a small network of activists and legal scholars who operate on antitrust’s fringes as representative of scholarly sentiment regarding antitrust action. The only real antitrust scholar among them is Tim Wu, who, when you look closely at his public statements, has actually gone no further than to call for Facebook to unwind its acquisitions of Instagram and WhatsApp.

In more sober moments, the press has acknowledged that the law does not support antitrust attacks on the tech giants. But instead of helping readers to understand why, the press instead presents this as a failure of the law. “To Take Down Big Tech,” read one headline in The New York Times, “They First Need to Reinvent the Law.” I have documented further instances of unbalanced reporting here.

This is not to say that we don’t need more antitrust in America. Herbert Hovenkamp, who the New York Times once recognized as “the dean of American antitrust law,” but has since downgraded to “an antitrust expert” after he came out against the breakup movement, has advocated stronger monopsony enforcement across labor markets. Einer Elhauge at Harvard is pushing to prevent index funds from inadvertently generating oligopolies in markets ranging from airlines to pharmacies. NYU economist Thomas Philippon has called for deconcentration of banking. Yale’s Fiona Morton has pointed to rising markups across the economy as a sign of lax antitrust enforcement. Jonathan Baker has argued with great sophistication for more antitrust enforcement in general.

But no serious antitrust scholar has traced America’s concentration problem to the tech giants.

#### 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 ev concludes negative

John B. Kirkwood 21, Professor of Law, Seattle University School of Law. American Law Institute. Executive Committee, AALS Antitrust and Economic Regulation Section. Advisory Board, American Antitrust Institute. Advisory Board, Institute for Consumer Antitrust Studies, "Tech Giant Exclusion," Florida Law Review, Forthcoming, pg. 42-43, 01/15/2021, SSRN.

The tech giants’ unjustified exclusionary conduct, however, should be addressed. **While they have not systematically eliminated large numbers of competitors, they have undercut individual third parties that sell on their platforms by downgrading them in search rankings**, **using seller-specific confidential data to copy their products, and cutting them off simply because they are competitors**. Although this conduct has harmed consumers, it rarely, if ever, has resulted in monopoly power or a dangerous probability of monopoly power.

#### No impact to slow growth – empirically denied and inevitable in long term

Duprat 21. Marie-Hélène Duprat - Senior Advisor to the Chief Economist at Societe Generale. “COVID-19 and Secular Stagnation” https://www.societegenerale.com/sites/default/files/documents/2021-01/COVID-19-and-Secular-Stagnation-EN.pdf

Despite extraordinary fiscal and monetary policy support, the COVID-19 pandemic, along with the measures taken to contain it—including unprecedented lockdowns and economic shutdown—has plunged the world economy into the deepest recession in modern history. In addition to its toll on public health and momentous short-term output losses, **the pandemic has already left an indelible mark on the global economy**. This paper suggests that, absent a more audacious policy action plan, the COVID-19 shock will leave deep and lasting scars on the global economy by exacerbating preexisting vulnerabilities, eroding potential output, and strengthening the forces of “secular stagnation”. **This is** partly **because of an anticipated long-term shift**

**\*\*MARKED in 1NC\*\***

**in behaviours and beliefs**. Indeed, the COVID-19 shock **is likely to trigger a structural increase in risk aversion** in the private sector **that will operate both to raise precautionary household savings** **and to reduce business investments**, **leading to a chronic deficiency of aggregate demand that will prevent economies from fulfilling their potential**. Moreover, the pandemic is giving a tremendous boost to the digital transition, which will contribute to widening social inequalities, themselves a force of secular stagnation in that they lead to the increased propensity of populations to save.

#### Emerging tech regulation fails AND no impact.

Allenby 16 – Brad Allenby, an American environmental scientist, environmental attorney and Professor of Civil and Environmental Engineering, and of Law, at Arizona State University. [Emerging technologies and the future of humanity, Bulletin of the Atomic Scientists, 71(6), https://journals.sagepub.com/doi/full/10.1177/0096340215611087]

It is thus highly likely that the first implicit assumption of the dystopian perspective is correct: Things are indeed different today, and the difference is fundamental and qualitative, not simply one of degree. Emerging technologies are making everything from individual molecules, to the human, to the planet itself, design spaces. Moreover, it is also likely that technological evolution, and all the concomitant changes in coupled institutional, social, economic, and cultural systems, will be more challenging and complex than anything humans have yet experienced. The remaining two issues, then, are: First, what can we do about it; and second, is this the end of humanity?

What can we do about it?

Precisely because new technologies are disruptive, they inevitably call forth opposition, both by conservative social forces and by threatened economic interests. Historical examples abound. With railroad technology, for example, conservative states such as the Austro-Hungarian Empire and Russia resisted rapid deployment, in part because it was feared that railroads might create social unrest in the still somewhat feudal and highly stratified cultures that characterized such countries; the French held back because of concerns it would destroy rural culture. The predictable result was that modernizing states that realized the commercial and military potential of railroad technology, such as Prussia, rapidly overtook the laggards in building rail infrastructure, with an eventual shift in geopolitical stature. In the United States, railroads were bitterly opposed by river transportation interests; in fact, Abraham Lincoln, when still a practicing lawyer, argued and won the seminal case for the Rock Island Railroad.4 (River shippers at the time were arguing that any railroad bridge over a river was an unlawful obstruction of commerce; had they been successful, railroads would have been limited to operating between rivers and streams, but not crossing them.) A more recent example is provided by the thousands of people sued by the Recording Industry Association of America in its vain effort to defend a technologically obsolete business model for the distribution of music. There are plenty of reasons, in other words, why emerging technologies might be regarded as dangerous and disruptive, and thus worth stifling.

History, however, indicates that while local opposition can be successful, it will not halt the evolution of technology. Consider, for example, the Japanese attempt to limit gunpowder technology to preserve traditional Samurai culture; successful in the short term, it left Japan open to subjugation by Western naval forces with gunpowder technology. Similarly, environmentalists and governments in Europe have aggressively opposed genetic engineering (GMOs, or “genetically modified organisms”) in agriculture. Outside Europe, however, GMO technology has been one of the most rapidly adopted agricultural technologies in history. Efforts to regulate the proliferation of nuclear weapon technology have been somewhat successful, but it appears unrealistic to assume that the technology can be uninvented.

Especially given today’s globalized culture, and the strategic and military advantages that emerging technologies can provide, it is highly unlikely that meaningful constraints on technological evolution, whether derived from cultural, competitive, or religious foundations, will be successful. That is particularly true as all players in the global Great Game understand that leadership in science and technology domains is a necessary, if not sufficient, prerequisite for dominance. Moreover, given the complexity of many emerging technology systems, especially as they co-evolve with other natural, built, and human systems, it is unfortunately also likely that projecting their effects and evolutionary paths before they are actually adopted and become embedded in their social and cultural context is not just hard, but for all practical purposes impossible. One can, and should, generate scenarios. But exhortations that purport to elevate hypotheticals to predictions and implications of certainty about future states are misplaced.

In short, there is no certainty, and the genie is well and truly out of the bottle. However, that doesn’t necessarily imply that we can’t modulate future technological evolution, but that the way we think about it today may be too simple, and our institutions too slow and maladaptive, to be up to the task.

Beyond simplistic dystopianism

This analysis suggests that, as dystopians might argue, emerging technologies are indeed potent, and that, especially as the human is becoming an active design space, if AI doesn’t destroy humanity, something will. But this is a grossly incomplete perspective.

Humanity, as it appears at any particular time, is always doomed. Foragers and hunter-gatherers were doomed, as were the serfs of medieval Europe with their small plots and lives lived within a radius of a few miles of where they were born. And so, in our turn, are we. Doom is, in other words, evolution, and it is unlikely that we will stop it—or, really, that we should want to. In fact, the images that we cling to, personally and institutionally and culturally, are already obsolete. The ethics and values that we insist we will impose on the future are not only historically and culturally contingent, but already obsolete as well. We want the physical and cultural landscape we live in now to propagate into tomorrow, because we all unconsciously privilege the present, but that is not how complex systems work. They evolve, and indeed our world is evolving at a remarkable and accelerating clip.

The fallacy of the dystopians, then, is not in their analysis of the power of technology, or the accelerating and destabilizing rates of change. The fallacy is in equating evolution with dystopia, and, without admitting it, privileging the present over the promise and inevitability of the future. What is at risk is the limited mental model of “human” that all of us carry with us, not “humans” as an ongoing process. This is actually a common category mistake in modern discourse: Sustainability advocates and environmental activists often claim that “the planet is at risk,” but of course it is not. The planet is a large mass of rock and a film of various carbon compounds, and that is not at risk at all. What is at risk is a particular mental model of what the world should look like, a constructed snapshot. That does not mean that there aren’t many environmental issues that require attention; of course there are. But, as in the case of the emerging technology discourse, it does mean that existential catastrophe language is not only invalid, but can actually prevent seeking constructive adaptations to accelerating change.

Our only recourse is neither technological fatalism nor ethical relativism. It is true that we have not yet appreciated, much less begun to respond to, the challenge of a future that will indeed be more complex and difficult than anything we have experienced as a species. Nonetheless, we can already identify several important principles. For example, we need to stop thinking of “problems” with “solutions,” and think more in terms of “conditions” that will require long-term, adaptive management. Challenges such as ISIS and climate change will not be solved, but they can and must be managed in light of other relevant goals. In this, the experience with nuclear weapons is instructive: They are not a problem that can be unmade, but they are a condition that can be, and has so far been, relatively successfully managed.

We also need to focus on creating option spaces—portfolios of social, institutional, and technological choices that can be adaptively and flexibly deployed in complex environments. Similarly, we need to play with scenarios: If dystopian pronouncements are instead taken as scenarios—“What would you do if…?”—they are far more useful and informative than suggestions of doom.

Socially and institutionally, we need to become more agile and adaptive. This is uncomfortable for many, because it implies a degree of contingency and uncertainty, but that is precisely why such skills are necessary. The rate of technological change is unforgiving and has already decoupled to a large extent from traditional governance mechanisms. So we need to develop new ones.

Individually, we need to become far more humble about our ability to visualize and prognosticate on a complex and dynamic future. Cautionary scenarios and hypotheticals are welcome exercises in practicing to adjust to the unknowable that lies in front of us, but they are not appropriate foundations for policy or legal action in the present. Nightmares are seldom reality, and when bad things do happen they are seldom the ones we thought about. Fear and anger in the face of change are popular responses—witness the rise of far right and far left factions, and fundamentalisms of all stripes, around the world—but they are maladaptive, and those in responsible positions at least cannot afford such luxuries.

# 1NR

## 1NR Politics

**Key framing issues:**

**1---PC outweighs and overcomes challenges**

**Schofield 11-9** (Rob Schofield, Director of NC Policy Watch, has three decades of experience as a lawyer, lobbyist, writer and commentator, President Biden’s remarkable record of accomplishment under nearly impossible circumstances, https://ncpolicywatch.com/2021/11/09/president-bidens-remarkable-record-of-accomplishment-under-nearly-impossible-circumstances/)

**Remind** yourself for a moment of the **scale** and **scope** of the challenges **Biden** faced when he took office in January and the limited and inadequate collection of tools that were at his disposal to tackle them.

Forty-one weeks ago, our nation had just survived a violent attempted coup d’état and the outgoing president who had spurred it on by refusing to acknowledge the fact of his defeat was about to be impeached for a second time. Meanwhile, daily deaths from a global pandemic were peaking at their highest levels, the national economy remained a mess, and a dire, worsening, and largely unaddressed environmental emergency continued to place the planet in an ever-tightening grip.

Only Abraham Lincoln and possibly Franklin Roosevelt entered their presidencies under more difficult circumstances.

What’s more, unlike Lincoln and Roosevelt who took office at a time in which their parties enjoyed large congressional majorities, Biden entered the oval office with no such advantage. Indeed, it was only thanks to two near-miraculous come-from-behind wins in a pair of January Georgia Senate runoffs that Democrats wield any authority at all on Capitol Hill.

Now add to all this the fact that the **impossibly narrow** Democratic Senate “majority” (51-50 thanks to the presence of Vice President Harris) includes determined **ideological conservatives** like West Virginia’s Manchin and Arizona’s Sinema, and that the antiquated Senate **filibuster** rule that requires 60 votes to pass almost anything meaningful, and **it’s a marvel** that the nation has **not** descended into **complete political gridlock** and chaos.

In comparison to Biden, the Apollo 13 astronauts were well-equipped when they jerry-rigged their spacecraft, quite literally on the fly, a half century ago.

**Amazingly**, however, **no national crash** has ensued.

Instead, under the **President’s** coherent, sober, and science-based **leadership**, the nation has aggressively locked horns with the pandemic by undertaking one of the largest and most successful mass vaccination campaigns in human history – a campaign that, despite persistent sabotage efforts from some on the political right, has saved millions of lives.

Meanwhile, thanks in large measure to Biden’s aggressive and on-the-mark stimulus policies, the economy has revived at a record pace and huge strides have been made in slashing poverty – especially child poverty.

And then there is the climate emergency, where, thanks to the President’s vision and simple common sense, the U.S. has rapidly transformed its role from that of science and reality-denying roadblock to a global leader. There are still miles to travel in this realm, but the massive **infrastructure** legislation finally approved this past weekend by small **bipartisan majorities** in both house of Congress further cements this vitally important policy 180.

Now add to all this the literally thousands of talented and diverse appointees Biden has named to the judiciary, the ambassadorial corps, and the leadership of numerous regulatory agencies – most of whom have already effected huge and positive federal policy shifts in everything from student loans to toxic chemicals to human rights – and the magnitude of his administration’s accomplishments in less than 300 days looms even larger.

Has the Biden presidency been perfect? **Of course not**. Like all of his predecessors, Biden has made his share of mistakes. Like Barack Obama, he’s likely wasted too much time in search of imaginary common ground with ideological conservatives determined to undermine him at every turn. While necessary, the Afghanistan withdrawal could have proceeded more smoothly. And as with many other presidents, one also yearns at times for a leader with the kind of rhetorical gifts that would enable him to easily skewer and deflate his adversaries and inspire widespread support for the kind of wholesale progressive changes the nation needs.

**But**, **in the end,** this is **quibbling**. In light of the **huge political challenges** under which he’s been forced to operate (and especially in comparison to the lawless corruption and intellectual vacuity of his predecessor that inspired night terrors in millions – maybe even billions – of humans), Joe Biden has achieved **a remarkable record of accomplishment**. Whatever the future holds, our nation will be forever in his debt.

**2---Prefer predictive uniqueness:**

**A---Any hesitation just demonstrates issues that need to be worked out---the ultimate package still passes**

**Kapur 11-8** (Sahil Kapur, NBC News, Centrist Democrats now hold the cards as infrastructure bill heads to Biden's desk, <https://www.nbcnews.com/politics/congress/centrist-democrats-now-hold-cards-infrastructure-bill-heads-biden-s-n1283485>)

Jonathan Kott, a Democratic consultant and former aide to Sen. Joe Manchin, D-W.Va., said **moderates** "will continue to **negotiate in good faith** as they have been" but simply want the CBO score. "If the CBO is not as expected, I think negotiations will continue but definitely make this a longer process," he said.

If the bill passes the House, it still needs to **clear the Senate**, where two key obstacles remain.

The first is **Manchin**. He has objected to **some** of the provisions in the House bill, particularly four weeks of paid family and medical leave. That and other policies may need to be removed to win his vote, without which Democrats cannot advance the bill.

The second is the so-called Byrd rule, which limits the budget process that Democrats are using to matters of spending and taxes. Republicans can challenge any provision as "extraneous," and the Senate parliamentarian would decide whether it can be included.

Kott said he expects the Senate to **pass the bill** "in mid- to late December."

"I think **moderates** want to make sure they get the bill **right**, not **fast**," he said.

Competing deadlines

Other hard deadlines could complicate the December timeline. Congress must pass legislation to fund the government by Dec. 3 or face a shutdown. Lawmakers also need to raise the debt limit to avert an economic meltdown. And Congress plans to pass a massive defense policy bill before the end of the year.

The infrastructure legislation provides around $550 billion in new spending, for a total of more than $1 trillion, in projects from roads to public transit to rural broadband. It was co-authored by Manchin and Sen. Kyrsten Sinema, D-Ariz., and it became a top legislative priority of House centrists who had battled with liberals for months over the timeline to pass it.

The legislation is projected to add $256 billion to the debt over a decade, according to the CBO.

**Despite** progressives' biggest **fears**, **centrist Democrats** have **plenty** to like in the **B**uild **B**ack **B**etter bill. **Manchin** has lavished praise on **universal pre-K** and **child care** funding, **Sinema** has championed the **climate** change measures, and **Gottheimer** has made an **increase** of the state and local tax deduction a **priority**

The White House is counting on those **incentives** to help **push** the package **across the finish line**.

**B---Oppositions are insufficient to tank the deal**

**Romm 11-6** (Tony Romm, WaPo staff, With infrastructure victory in hand, Democrats brace for next battle over $2 trillion spending bill, <https://www.washingtonpost.com/us-policy/2021/11/06/congress-biden-spending-deal/>, y2k)

That tees up for Congress **an eleventh-hour sprint** in the **waning** moments of the year through **treacherous** political terrain. The $2 trillion tax-and-**spending proposal** is still unsettled policy in the eyes of moderates, including Sen. Joe Manchin III (D-W.Va.), who long has sought to **whittle down** its price tag. And the debate is set to arrive just as Congress is preparing to take on a **host** of additional challenges, including a renewed need to **fund** the government in December, that could distract Democrats in the end.

**For all the hurdles they face**, **however**, Democrats this week sounded **an upbeat note** — emboldened anew after achieving **a fresh political victory**.

“Let me be clear: **We will pass this** in the House. And we will pass it in the Senate,” Biden said during a speech Saturday heralding the passage of the infrastructure bill.

The $2 trillion measure — called the “Build Back Better Act,” which bears the name of the president’s 2020 campaign slogan — aims to expand the footprint of government to deliver more robust services to American workers and families, especially those in greatest need.

Democrats aspire as part of the package to expand Medicare benefits to cover hearing aids and lower the price of insulin and other prescription drugs for seniors. They also hope to institute free universal prekindergarten and provide billions of dollars to boost child care. Party lawmakers have included one of the largest investments ever to combat climate change, a new effort to reform the country’s immigration system and a slew of expanded tax benefits to help families with children. And they have proposed to fund the measure through new taxes on millionaires and profitable corporations.

What's in Biden's $1.75 trillion spending plan

The focus on what some call “social” spending differs considerably from the infrastructure bill, which trains its investments on improving the country’s roads, bridges, pipes, ports and Internet connections. But both plans grew out of the same series of policy blueprints that Biden put forward this spring, as he pledged to revitalize the U.S. economy in the aftermath of the coronavirus pandemic.

The infrastructure bill is soon set to become law. The $2 trillion package, meanwhile, has yet to clear either chamber and has drawn considerable Republican opposition. Instead, Democrats in Congress are preparing to return to the package later in November, embarking anew in a debate that has divided the party considerably since the spring.

The first hurdle is the House, where Democrats are eyeing the week of Nov. 15 to consider the $2 trillion proposal. The time frame stems from an agreement between liberals and moderates that helped put an end to months of fighting and paved the way for the infrastructure bill to clear the House on Friday.

**For months**, left-leaning lawmakers with the **C**ongressional **P**rogressive **C**aucus had held up the public-works bill as leverage in talks with centrists over their broader spending ambitions. In doing so, they insisted both proposals had to move in tandem to win their support. But they ultimately agreed to ease their **blockade** in a late-night Friday **compromise** with a group of **moderates** that had been in revolt. Liberals said they would back **infrastructure**, assuaging **centrists**, who in turn pledged they would support the **B**uild **B**ack **B**etter Act, provided they can see an official analysis of its fiscal impacts to determine if it is deficit neutral. (The bill’s top backers say it is funded in full.)

“We commit to voting for the Build Back Better Act, in its current form other than technical changes, as expeditiously as we receive fiscal information from the Congressional Budget Office,” said five moderates, including Rep. Stephanie Murphy (D-Fla.), a leader of the Blue Dog Coalition, and Rep. Josh Gottheimer (D-N.J.), who helped broker the pact. They also promised to work “to resolve any discrepancies” if the budgetary analysis is unfavorable.

Joining moderates on the steps of the Capitol to announce the truce, Rep. Pramila Jayapal (D-Wash.), the head of the Congressional Progressive Caucus, stressed the two factions are “going to **trust each other** because the Democratic Party is **together** on this.”

“We’ve always said we need to get both bills done,” Jayapal told reporters. “And tonight we have an agreement that will get both bills done.”

The agreement is **critical** in the narrowly **divided House**: Speaker Nancy Pelosi (D-Calif.) can only afford to lose three votes in the narrowly divided chamber, where Republicans vehemently oppose the measure and are unwilling to aid in the same way they did with the infrastructure deal. If **liberals** and **moderates** are not in lockstep, **the entire $2 trillion endeavor** would be **doomed**.

Speaking to reporters Friday, Pelosi expressed a measure of **confidence** that they could **finalize** the bill in the House **in the coming weeks**. “As we do, then, **we’ll have a Thanksgiving gift for the American people,**” she said.

**3---Sources**

**A---Expert consensus**

**Gibson 11-10** (Megan Gibson, senior editor, international, of the New Statesman, Joe Manchin, the influential Democrat blocking climate action, https://www.newstatesman.com/world/americas/north-america/2021/11/joe-manchin-the-democrat-blocking-climate-action)

**Despite Manchin’s opposition**, **experts** say there is still **hope** that the US will be able to **pass** **significant** climate legislation. The social spending bill has managed to incorporate some, though not all, of the **climate measures** dropped from the infrastructure bill. More importantly, **centrists** including **Manchin** have **hinted** that they are **willing** to **support** the bill in theory.

“**The prospects for real action are still good**,” said David G Victor, co-director of the Deep Decarbonization Initiative at the University of California, San Diego, though he acknowledges that the new measures don’t include penalties for utility companies that refuse to move away from fossil fuels (“it’s a big dump truck full of carrots” without any sticks, he said).

Robbie Orvis, senior director of energy policy design at Energy Innovation, a think tank based in Washington, DC, agrees. “I’m the most **optimistic** I’ve been on federal policy **in my career.**”

**B---Insiders**

**Viser 10-28** (Matt Viser is a national political reporter for The Washington Post, Biden raises the stakes with the biggest gamble of his presidency, <https://www.washingtonpost.com/politics/biden-deal-presidency/2021/10/28/52a273cc-37ff-11ec-91dc-551d44733e2d_story.html>, y2k)

One close **ally** of the White House, who has **knowledge** of the **internal dynamics**, said the desire to **seize on the moment** to spur action and strengthen his position before heading abroad was **a clear factor** in setting the stage for Thursday’s **rollout**. Biden himself had **pleaded** with lawmakers in to help him get a **deal** before his trip — even appealing to their patriotism in at least one meeting.

Beyond that, there was a sense around Biden that deadlines can move things along, said the ally, who spoke on the condition of anonymity to be candid. Now Biden allies hope he looks stronger both at home and abroad.

Sen. Christopher A. Coons (D-Del.), a close friend of Biden’s, said the president’s trip to Europe, combined with the need to move ahead with other legislative priorities like the defense authorization bill and dealing with the debt ceiling, spurred the president to act on Thursday.

“We’re out of runway. In the caucus, we’ve been sort of circling this airport for weeks, and it’s time to the land the plane so that he can take off and focus on world leadership and so that the average American can see the positive outcomes,” Coons said. “There’s also the small but very urgent matter of the election in Virginia coming up.”

Biden, **a veteran of the Senate**, also is in tune with the **rhythms** of legislative negotiations and struck the **right** closing tone at the **right moment**, Coons said. “He understands that the **legislative process** has **an arc** to it,” he said.

**No issue with the CBO scores---numbers are coming and they are looking fantastic**

**PBS 11-9** (PBS News Hour, White House ‘confident’ Congress will pass Build Back Better bill, https://www.pbs.org/newshour/show/white-house-confident-congress-will-pass-build-back-better-bill)

How sure are you — how sure are you that this **CBO score** will be available by then? But also how worried is the president and yourself that there won't be the score needed to pass this bill in the House?

Brian Deese:

Well, we're **very confident** that this bill is **fiscally responsible** and **fully paid for.**

We saw last week the **J**oint **C**ommittee on **T**axation, which is the **gold standard** for the revenue provisions in this bill, reinforce that there is **more** than enough **revenue**, more than enough **offsets** to **offset** all of the new investment in this package.

And this is the typical process. Both chambers of Congress typically vote on bills when they have enough information. So, we anticipate that there will be **more information** provided to lawmakers this week, and, **consistent** with the commitments that lawmakers and leadership made, that there will be a vote **next week**, based on that additional information, in the House.

This is a process. The bill will pass the House and then will go to the Senate. But, at the end of the day, the most important bottom line is, these are high-value, targeted investments in the American people and the American economy that are fully paid for.

Yamiche Alcindor:

How confident are you that you have the votes to get this Build Back Better Act passed?

And I also wonder what — you're in the room. What are you telling lawmakers as you try to close this deal?

Brian Deese:

We are **confident** that this framework will pass the **House** and will pass **the Senate**. And what we're telling lawmakers is, this is an easy vote.

**Big tech antitrust splits the party---it’s divisive**

**Nylen 6-23** (LEAH NYLEN , Politico staff, **Progressives**, **moderate Democrats** tussle over tech **antitrust** package, <https://www.politico.com/news/2021/06/23/democrats-tech-antitrust-package-495644>, y2k)

A package of **antitrust bills** to rein in the **big**gest U.S. **tech** companies is proving **divisive** not just for Republican lawmakers, but also for **Democrats** who are **split** on whether the legislation goes too far.

The six bills being marked up Wednesday by the House Judiciary Committee speak to an oft-repeated goal of many Democrats: curbing the power of Silicon Valley. Four of the bills would **zero in** on Apple, Amazon, Facebook, Google and Microsoft for greater **regulation**, limiting their ability to buy up promising startups that could grow into rivals and prohibiting them from using their platforms to discriminate against competitors.

The push to crack down on those tech giants has drawn support from a broad coalition of lawmakers fed up with Silicon Valley, from progressive leaders like Reps. Pramila Jayapal (D-Wash.) and David Cicilline (D-R.I.) to outspoken allies of former President Donald Trump like Reps. Ken Buck (R-Colo.) and Matt Gaetz (R-Fla.). On the Republican side, it has also prompted public rebukes by party detractors who call the legislation an affront to conservative values.

But **a growing number** of **moderate Democrats** are also **voicing concern** about the **proposals** under consideration this week, which they warn could have a vast impact on the **U.S. economy**. That includes at least two key California Democrats that sit on Judiciary, Zoe Lofgren and Lou Correa, who will have a say Wednesday on which bills make it out of the panel and which don’t.

**Plan would publicly divide the party---it decks dem unity**

**Klar 6-24** (Rebecca Klar, California Democrats clash over tech antitrust fight, <https://thehill.com/policy/technology/560140-california-democrats-clash-over-tech-antitrust-fight?rl=1>, y2k)

“There has been **concern** on both sides of the aisle about the **consolidation of power** of the tech companies and this legislation is an attempt to address that in the interest of fairness, in the interest of competition, in the interest of meeting needs of people who are whose privacy whose data and all the rest is at the mercy of these tech companies,” Pelosi said.

She also dismissed concerns raised by the tech companies lobbying against the legislation. The New York Times reported earlier this week that Apple CEO Tim Cook called Pelosi and other members warning that the bills were being rushed and could end up hurting consumers. Pelosi said Thursday that she told Cook to put forth any “substantive concern” as Congress moves ahead with the proposals.

“They can put forth what they want to put forth, but we’re not going to ignore the consolidation that has happened and the concern that exists on both sides of the aisle,” Pelosi said.

Lawmakers on both sides of the aisle in support of the bills, including the unlikely allies of Jayapal, Gaetz and Antitrust Subcommittee Chairman David Cicilline (D-R.I.), have dismissed arguments that the legislation was rushed in any way, pointing to the 16-month bipartisan investigation into the market power of the four tech giants.

“I urge my colleagues to read the report,” Cicilline said.

He also called for members to read the “pleas from small businesses” that are “begging them to do something.”

It’s unclear when the bills will head to the House floor for a vote, **but** **centrist Democrats** are already **putting pressure** on Pelosi to pump **the brakes** and have the committee hold hearings before proceeding to a House vote. **Opposition** from **moderate Democrats** along with members of the California delegation could prove **problematic** and **risk dividing the party publicly in a floor vote.**

**Industry will target centrists in lobbying against the plan**

**CNT 7-1** (California News Times, Big Tech lobby banks on moderate Democrats to defeat new regulation, <https://californianewstimes.com/big-tech-lobby-banks-on-moderate-democrats-to-defeat-new-regulation/421555/>, y2k)

This move is part of a broader push to enact the most important changes to US competition law of the generation. **But** industry lobbyists are targeting **centrist Democrats**, especially California Democrats, because they’re trying to **thwart** the most **radical** steps.

**There’s a growing disagreement**

**Newston 6-24** (Casey Newston, the Verge stsaff, WHY THE TECH ANTITRUST REFORM BILLS ARE STRUGGLING TO MOVE FORWARD, <https://www.theverge.com/2021/6/24/22548317/tech-antitrust-reform-bills-congress-democrats-republicans-editorial>, y2k)

I mean, the **Democrats aren’t exactly all in agreement,** either.

There is a **split** between **progressive** and **moderate Democrats** in just how far these bills should go to **reshape the economy**. And some bills go quite far — Rep. Pramila Jayapal’s Ending Platform Monopolies Act would permit the government to sue big platforms to break them up — Amazon could be forced to divest itself of its logistics network and of Amazon Web Services, for example; Facebook could have to spin out Instagram and WhatsApp.

That has made some Democrats uneasy, as Leah Nylen and Cristiano Lima reported Wednesday in Politico:

**A growing number** of moderate Democrats are also **voicing concern** about the **proposals** under consideration this week, which they warn could have a vast impact on the U.S. economy. That includes at least two key California Democrats that sit on Judiciary, Zoe Lofgren and Lou Correa, who will have a say Wednesday on which bills make it out of the panel and which don’t.

**Empirically---it causes intra-party fights**

**Scher 7-19** (Bill Scher, the host of the history podcast "When America Worked" and the co-host of bipartisan online show and podcast, A Short History of Democrats and Antitrust

Biden’s war against corporate gigantism is good policy and better politics. <https://washingtonmonthly.com/2021/07/19/a-short-history-of-democrats-and-antitrust/>, y2k)

Biden’s revival of antitrust isn’t just good policy; it’s also good politics. That’s because it can bridge ideological tensions between the party’s younger left flank and its older centrists. Antitrust has appeal to both factions. Talk of restoring competition may upset a handful of giant corporations, but not the wider swath of smaller businesses and entrepreneurs. Socialists may not love capitalism but it’s hard to see them getting too mad at moderate Democrats who draw real corporate blood in the name of repairing capitalism.

**Yet** **intra-party tensions** remain. During a recent **C**ongressional **P**rogressive **C**aucus conference call, a **heated dispute** broke out as Congresswoman Zoe Lofgren criticized the authors of **aggressive antitrust legislation** for **hasty** work, and Congressman David Cicilline accused Lofgren of shilling for Silicon Valley. If Biden is to **succeed** where his predecessors fell short, he will need to be **mindful of his party’s history.**

**PC solves opposition---the infrastructure bill shows Biden will get it across the finish line**

**Keith 11-7** (Tamara Keith, NPR, Biden's infrastructure win gives him some momentum. Here's why he needs that, <https://www.npr.org/2021/11/07/1053214146/biden-infrastructure-bill-politics>, y2k)

**Biden worked the phones to get the bill passed**

As a senator in the 1990s, Biden boasted about his ability to find **common ground** and get **big** legislation passed. As president he has struggled to drag what he called the "once in a generation" **infra**structure package over **the finish line**, wading through weeks of **procedural wrangling** and **ugly congressional sausage-making.**

Biden and top aides **worked the phones** from the presidential residence late into the night on Friday, making sure **wavering Democrats didn't balk**. The progressive wing had wanted to use the infrastructure bill as leverage to ensure Biden's social spending package also passes. After the deal was already sealed, Biden even called the mother of a key House Democrat, Rep. Pramila Jayapal, a classic Biden move.

He has also had conversations with moderates, who are concerned he is spending too much time shooting for transformational programs and not enough time on kitchen-table issues. That was the takeaway for some Democrats from the loss in Virginia's gubernatorial race on Tuesday.

Rep. Abigail Spanberger, D-Va., told the New York Times that Biden was going too far, saying: "Nobody elected him to be F.D.R., they elected him to be normal and stop the chaos."

Asked about Spanberger, Biden described her as a friend, and said they had joked about it afterward. But he stood resolute behind his strategy to go big when it comes to giving Americans relief through the social programs in his next big bill.

"I don't intend to be anybody but Joe Biden. That's who I am. And what I'm trying to do is do the things that I ran on to do," he said. "Ordinary, hard-working Americans are really, really — been put through the wringer the last couple years, starting with COVID," he said.

And he maintained that Democrats should see Tuesday's election loss as a call to forge ahead on his plans. "They want us to deliver," Biden said of voters. "Last night, we proved we can."

President Biden covers his eyes to choose a reporter to ask a question after speaking about the passage of infrastructure bill.

The next bill may be **tougher** for Democrats to pass

Former Obama aide Palmieri said this week's elections lit a fire under her party. "The losses had the necessary impact of focusing Democrats on getting the very popular bipartisan infrastructure bill done," she said.

The next package would have benefits for Democrats facing reelection next November, Palmieri said, including tax credits that take effect immediately. "There will be benefits for Democrats to run on in 2022," Palmieri said.

But first, Biden will need to **knit together** the progressive and moderate wings **again**. Republicans have already said they will not support the next package, which has tax increases on the wealthy to pay for extending the child tax credit, universal pre-K and elder care, and other Democratic wish-list items.

Biden has faced **questions** about whether he was **forceful enough** in forging consensus — or **too willing** to accept compromise. On Saturday, he defended his approach of brokering deals. "You can't have all you want. **It's a process**," he said, explaining that it is taking **time** to **build up trust.**

There is **no guarantee** the **larger package** will pass. Biden has been steadfastly mum on whether he has secured commitments from Senate moderates, who have raised concerns about the cost of the social safety net and climate package. But on Saturday, in the State dining room, Biden said he thinks **it will happen**.

"I feel confident that we will have **enough votes** to pass the Build Back Better plan," Biden said. When a reporter asked what gave him that confidence, Biden responded with one word. "Me."

**Biden’s plan cuts emissions in half by 2030**

**Freedland 10-29** (Jonathan Freedland, Guardian staff, The battle to get here was ugly, but the impact of Joe Biden’s climate plan will be huge, <https://www.theguardian.com/commentisfree/2021/oct/29/joe-biden-climate-plan-emissions-cop26>, y2k)

Besides, **$555bn is not to be sneezed at**. I spoke on Thursday with Ben Rhodes, former adviser to Barack Obama. In 2009, Obama set aside **a mere $90bn** for climate-related action. But even that sum worked **wonders**. Despite Trump’s “**ranting** and **raving**”, and despite his **withdrawal** from the Paris accords, Rhodes notes that the US **actually** met its Paris targets in **the Trump period**.

That’s because Obama’s move had signalled where the economy was going, setting in train a shift that Trump could not reverse: “Companies were **adjusting**, the markets were **adjusting**, money was **moving**.”

---- MARKED ----

Now, a decade later, “people are not building **new coal plants** in the United States; they’re building **windfarms** and **solar panels.”**

**Biden is sending a much bigger signal now**. Combined with various **executive actions** he can take as **president** – moves he can make without the blessing of the senate or Manchin or anyone else – the legislation should help US greenhouse emissions fall to **half** their 2005 levels by **2030**.

**Warming leads to extinction**

**Kareiva 18**, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al. (Peter, “Existential risk due to ecosystem collapse: Nature strikes back,” *Futures*, 102)

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose **existential risks**. This is because of intrinsic **positive feedback loops**, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield **surprises**. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of **food** and **water**, and shortages of food and water can create **conflict** and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to **exacerbate drought** and **water scarcity**

**---MARKED---**

, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases **storm frequency** and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, **coastal communities will be exposed to unprecedented storm surge**—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare **extreme events** because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have **adapted** to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, **the Earth’s climate system is rife with positive feedback loops**. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could **catch humanity off-guard** and produce a true **apocalyptic event**. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that **runaway climate change**, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends **even greater existential risks**. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.