## 1

#### The United States federal government should *issue* and *uphold* guidance documents that require antitrust review of restrictive contracts governing post-sale use restrictions on products embodying patented components and establish positive incentives for corporations which engage in compliance.

#### Solves the AFF and competes – guidance documents have near-identical effects to binding mandates but never fiat the plan

Shapiro ’14[Stuart; 2014; Associate Professor and Director of the Public Policy Program in the Bloustein School of Planning and Public Policy at Rutgers University; Harvard Journal of Law and Public Policy, “Agency Oversight as ‘Whac-A-Mole’: The Challenge of Restricting Agency Use of Nonlegislative Rules,” vol. 37]

C. Compelling Compliance The supposed largest advantage of informal rulemaking over nonlegislative rules is that, once promulgated, legislative rules have the force of law. Theoretically, **guidance documents**, in all their forms, are **not binding** on the regulated parties. **Numerous scholars**, however, have noted that this lack of “**bindingness**” creates **less of a difference** between **regulations** and **nonlegislative rules** than it might seem. Two reasons have been noted for this lack of distinction. The first is that the regulated parties will often **comply out of fear** of the agency. The second is that **courts**, though not as deferential to agencies enforcing regulations, have **given** some **deference** to agencies in **interpreting** their own nonlegislative rules.43 When an agency issues a **guidance document** or **public instructions** to its **enforcement** personnel, it **leads** the regulated community to understand what the **agency expects** from it. A regulated firm must **make a choice**: **comply** with the guidance document—and likely be **safe from prosecution**—or do something different that it **believes** to be legally compliant—and be **prepared to litigate** the issue. Professor William Funk argues that the choice is relatively clear: Regulated entities, unable to obtain pre-enforcement review of a questionable nonlegislative rule, are put in the **unenviable position** of **having to conform** to the questionable rule or **willfully act contrary** to its terms. In **many cases**, the **risk analysis** will counsel in **favor of complying** with the rule, **even when** the doubts as to the lawfulness of the rule are substantial. Agencies act with the knowledge that their nonlegislative rules may escape pre-enforcement review, and they may **count** on the **coercive** (extortionate) **effect** of the **unreviewable rule** to **achieve compliance** even when they might be very reluctant to test the validity of their rule in an actual enforcement action.44 Anthony argues that this ability to **compel compliance**, combined with the factors described above, makes nonlegislative rules **very attractive** for agencies: “If such nonlegislative actions can visit upon the public the **same practical effects** as legislative actions do, but are **far easier to accomplish**, agency heads (or, more frequently, subordinate officials) will be enticed into using them.”45 Footnote 45 begins: Anthony, supra note 27, at 1317; see also Asimow, supra note 38, at 384 (“Most members of the public **assume** that **all agency rules** are **valid**, **correct**, and **unalterable**. Consequently, most people **attempt to conform** to them rather than to mount **costly**, **time-consuming**, and usually **futile** challenges. Although **legislative** and **nonlegislative** rules are **conceptually distinct** and although their **legal effect** is profoundly different, the **real-world consequences** are usually **identical**.”). Footnote 45 ends:

#### The positive inducement plank incentivizes corporations to comply- compliance happens *pre-enforcement-* historically successful with *antitrust* guidance documents- solves any certainty deficits

Brooks et al. ’19 (H. Holden Brooks Elizabeth A. N. Haas Lisa M. Noller, Foley & Lardner LLP, https://www.foley.com/en/insights/publications/2019/09/doj-antitrust-incentivize-corporate-compliance, “DOJ Antitrust Division Announces New Policy to Incentivize Corporate Compliance”, 05 September 2019)

**The Department of Justice Antitrust Division will now consider a target company’s antitrust compliance program when determining how to resolve criminal matters. This represents a fundamental shift in the Antitrust Division’s longstanding approach to compliance programs in the context of criminal enforcement, and specifically with respect to the circumstances in which a corporation may benefit from having an effective antitrust compliance program – both as a preventative measure and also in the event the company becomes the subject of a criminal antitrust investigation.** **The Antitrust Division outlines its current approach in detail in a July 2019 guidance document, “Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations,” which also clarifies the Antitrust Division’s approach to compliance at the time of sentencing. These developments also were the subject of remarks delivered in July 2019, at NYU School of Law by Assistant Attorney General Makan Delrahim, head of the Antitrust Division. The Antitrust Division’s new model is aimed at incentivizing comprehensive compliance programs and “recognize[ing] the efforts of companies that invest significantly in robust compliance programs,” according to AAG Delrahim. Companies with no antitrust programs, or with antitrust policies and training that could benefit from updating or expansion, now have concrete guidance and a significant added incentive for moving forward with this important aspect of compliance.** Antitrust Compliance Programs at the Charging Stage: An Historic Change in Antitrust Division Policy Historically speaking, at the stage of a criminal antitrust investigation in which the Antitrust Division is considering whether to recommend charges against a corporation, the Antitrust Division Justice Manual directs prosecutors to consider several factors from the DOJ Memo, “Principles of Federal Prosecution of Business Organizations.” Among these ten factors are four relating to including corporate citizenship: (1) whether a company has implemented robust and effective compliance programs, and when wrongdoing occurs, they (2) promptly self-report, (3) cooperate in the Division’s investigation, and (4) take remedial action. Until now, however, the Division’s Justice Manual specifically barred prosecutors from giving credit for compliance programs at the charging stage. **Under the Antitrust Division’s new approach, even companies that are not “first in” under the leniency program will potentially receive credit at the charging stage if the corporate citizenship-related factors, including a robust and effective antitrust compliance program, are present. The DOJ Justice Manual provisions relating to antitrust charging decisions now mandate that compliance programs be taken into account, looking both at programs in place when the relevant conduct occurred and programs put in place by the time of the charging decision.** By specifically requiring a review of corporate antitrust compliance programs, including whether they sufficiently could have deterred criminal conduct, Antitrust Division prosecutors have more reasons to consider a Deferred Prosecution Agreement (DPA) in resolving a criminal case. In AAG Delrahim’s remarks, and in the July Guidance, the Antitrust Division has been careful to clarify that **non-prosecution agreements and immunity from charges and fines will generally continue to be available only to “first in” cartel participants and that having an antitrust compliance program does not guarantee that a DPA will be available or recommended**. **Along with the primary benefit of avoiding and detecting antitrust violations through effective compliance measures, the possibility of more favorably resolving a criminal investigation (perhaps through a DPA) should be a significant incentive to design, implement, and promote an antitrust compliance policy and a targeted training program.** To give corporations meaningful guidance on how to structure those programs, the new Guidance the Antitrust Division set forth how it will assess a corporation’s compliance program at the charging stage, setting forth detailed criteria associated with a list of nine factors. Design and comprehensiveness of the program Whether a corporation has a meaningful culture of compliance Who in the corporation has responsibility for the compliance policy Whether the program incorporates risk assessment The extent of training and communication about the policy Whether the program has built-in periodic review, monitoring, and auditing components Whether there is a reporting protocol as part of the program What incentives and discipline measures have been incorporated into the program Remediation after discovery of a violation of the antitrust laws, including implementation or improvement of existing compliance programs, and whether the compliance program has resulted in discovery of a violation While AAG Delrahim cautioned that these elements are not a “checklist,” he did explain that they should help prosecutors address three preliminary questions at the outset of every investigation: (1) does the company’s compliance program address and prohibit criminal violations, (2) did the program detect and facilitate prompt reporting of the violation, and (3) to what extent was the company’s senior management involved in the violation? Compliance Programs at Sentencing: Credit Under the Sentencing Guidelines Clarified With respect to sentencing, AAG Delrahim explained in his remarks at NYU, that a corporation’s antitrust compliance program will continue to be relevant in two ways. First, the Sentencing Guidelines provide for a three-point reduction in a corporate defendant’s culpability score if an effective compliance policy is in place. Second, an effective compliance program may contribute to a recommendation to the court to set a defendant’s fine within the Guidelines range or even below it. The July 2019 Guidance focuses on how the Antitrust Division will continue to consider a company’s compliance efforts at the sentencing stage, using a “rebuttable presumption” that a compliance program in place at the time of an antitrust violation was not effective, pursuant to the Sentencing Guidelines. A defendant can rebut that presumption by showing that individuals with responsibility for the compliance program reported directly to the governing leadership of the company, the compliance program detected the antitrust violation in a timely fashion, the company promptly reported the violation to the Antitrust Division, and no one responsible for the compliance program “participated in, condoned, or was willfully ignorant” of the antitrust violation. In other words, **if a company can demonstrate the program was designed to prevent and catch violators, yet actors were particularly devious in defeating an otherwise meaningful program, the company will get credit for its efforts.** The new Guidance also notes that “remedial efforts are also relevant to whether the compliance program was effective at the time of a charging decision or sentencing recommendation.” AAG Delrahim underscored the importance of a corporation’s efforts to implement or improve a compliance program after discovery of a violation by noting, in his July remarks, that the Antitrust Division had to date never recommended the three-point departure for a compliance program under the Sentencing Guidelines but had recommended for credit and a reduction in fines due to remediation efforts. The new Guidance sets forth how the Antitrust Division will approach the question of whether a company’s remediation efforts post-violation should be considered in determining whether a reduction in criminal fines is warranted. The factors to be considered include the following: Tone at the top, and whether compliance priorities were adopted and communicated by leadership Improvements to pre-existing compliance programs, and whether the company assessed areas of antitrust compliance weakness Creation of an antitrust compliance program, to the extent one was not in place Whether the company disciplined employees who contributed to antitrust violations or set up mechanisms to do so in the future Because these measures could result in significant reductions in criminal penalties for a corporation, moving quickly and deliberately to implement meaningful remediation measures should be a priority for any company that finds itself faced with a potential antitrust violation. The Antitrust Division has also clarified its approach to determining whether or not to recommend probation at sentencing for corporations that have accepted responsibility and cooperated with the Antitrust Division’s investigation. The new Guidance clarifies that the Antitrust Division will not seek probation for cooperating defendants except in limited circumstances, for instance, when a company has left culpable individuals in positions of authority. **The Guidance also directs prosecutors to determine whether a company that did not have a pre-existing antitrust compliance program has put one in place that meets the Sentencing Guidelines criteria for effectiveness. For companies that do not do so, the Division may recommend probation with periodic reporting requirements and an external monitor.** **Avoiding this kind of ongoing supervision should provide additional motivation for companies faced with antitrust violations to immediately take remedial steps to demonstrate adoption of effective compliance policies and best practices.** Conclusion and Recommendations **The shift in the Antitrust Division’s approach to giving credit for effective antitrust compliance programs at the charging stage, and the clarification of how and when effective antitrust compliance will matter to antitrust defendants at sentencing, highlights the value of having a comprehensive corporate antitrust policy and an ongoing, targeted antitrust training program.** The recent Antitrust Division Guidance puts companies on notice that simply having a “canned” or outdated antitrust policy, or training that is not specifically designed to detect and deter violations tailored to all relevant areas of a company’s business, will not result in a company receiving credit at the charging or sentencing stages of a criminal antitrust investigation. As underscored by the Antitrust Division’s Guidance, best practices in assessing and improving existing policies include taking the following practical steps: Ask whether a company’s legal and compliance functions have a current understanding of which business practices or job functions present the greatest antitrust risk. For instance, if a company has not undergone a recent audit or evaluation of sales force practices, joint ventures, and trade/industry association participation to ensure that they are being conducted in a compliant way, it would be worthwhile to consider taking that step. Ask whether a company’s antitrust policy and training “speak to” the company’s business and specific areas of risk in a manner that will be understood and absorbed by the relevant employees. If there is a need for targeted training based on current problems, questions, or market conditions, it would be prudent to consider scheduling specific training by department or business function. Ask whether a company has an effective reporting mechanism for all employees to bring potential violations to the attention of the compliance or legal departments. All employees should know how to come forward with information about potential antitrust violations and should be on notice that failure to do so could result in consequences related to their employment. Ask whether a company’s antitrust compliance “culture” is “top-down” and whether responsibility for overseeing antitrust compliance is in the appropriate hands. Merely having a policy and training module in the books is likely not sufficiently robust from the perspective of the Antitrust Division. Antitrust compliance should be a leadership priority and should receive adequate resources within the compliance and legal functions. Based on the feedback collected in response to these inquiries, a company should determine with antitrust counsel what steps should be taken to bring antitrust compliance programs in line with the current DOJ Guidance.

### 2

#### Counter Plan: The 50 States and relevant sub-federal actors should increase prohibitions on anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws to include antitrust review of restrictive contracts governing post-sale use restrictions on products embodying patented components.

#### The CP solves better – States consistently pursue antitrust action, even during periods of weak federal enforcement.

Arteaga and Ludwig 21 (Juan A Arteaga (Former senior official in the Antitrust Division of the US Department of Justice) and Jordan Ludwig, 1-28-2021, "Global Competition Review," Private Litigation Guide - Second Edition, <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement> TJR)

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[d] 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.

### 3

#### Text: The United States federal government ought to advocate expanding the scope of its core antitrust laws to include antitrust review of restrictive contracts governing post-sale use restrictions on products embodying patented components and implement the negotiated rule at the conclusion of the process.

#### Only the counterplan solves, spills over, and follows-on.

Gray ’15[Boyden; 2015; Founding Partner at Boyden Gray & Associates PLLC, former Special Envoy for Eurasian Energy Diplomacy, former Special Envoy for European Union Affairs, former Ambassador to the European Union, former Counselor to the President; Law and Contemporary Problems, “Upgrading Existing Regulatory Mechanisms for Transatlantic Regulatory Cooperation,” vol. 78, no. 4; RP]

The **benefits** typically associated with **reg-neg** include **improved information** due to the **iterative nature** of negotiation and the related **incentive to cooperate**,74 the increased **sense of legitimacy** that parties involved in the drafting process attribute to the resulting rule,75 closer correlation between the final rule and the proposed rule,76 the **avoidance of litigation**,77 **reduced delay**,78 and **faster adaptation** to the new rule by regulated entities involved from the beginning.79 Footnote 74: 74. See EDWARD P. WEBER, PLURALISM BY THE RULES: CONFLICT AND COOPERATION IN ENVIRONMENTAL REGULATION 126 (1998) (“The **interactive bargaining format** is intended to facilitate the **flow of information** among interested parties such that **innovative bargains** can be struck in a **timely manner** that facilitates the interests of all players.”); see also Jody Freeman & Laura I. Langbein, Regulatory Negotiation and the Legitimacy Benefit, 9 NYU ENVTL. L.J. 60, 121 (2000) (“**On balance**, the **combined results** . . . of the study suggest that **reg neg is superior** to conventional rulemaking on virtually **all of the measures** that were considered. Strikingly, the process **engenders** a significant **learning effect**, especially compared to conventional rulemaking; participants report, moreover, that this learning has **long-term** value **not confined** to the particular rulemaking.”). Footnote 75: 75. Freeman & Langbein, supra note 74, at 232 (“Most significantly, the negotiation of rules appears to **enhance the legitimacy** of outcomes. [The] **data** indicate that **process matters** to perceptions of legitimacy. Moreover, . . . reg-neg participant reports of **higher satisfaction** could not be explained by their assessment of the outcome alone. Instead higher satisfaction seems to arise in part from a **combination** of process and substance variables.”). Stakeholder satisfaction is **significant** because of “**mounting evidence** in **social psychology** that ‘satisfaction is one of the principal consequences of procedural fairness.’” Id. Footnote 77: 77. Id. (“Through **direct participation**, a sense of ‘**ownership**’ in the rule among participants is thought to **preempt** the **litigation** considered **inevitable** for most EPA rulemaking efforts.”). Footnote 79: 79. WEBER, supra note 74, at 127 (“[B]y giving stakeholders a **direct role** in **writing** the rule, as an ex-EPA administrator explained, the likelihood is **increased** that players at the table ‘underst[and] **exactly** what [is] meant by the regulation and what [is] **expected of them** once the regulation [is] final.’”). End of Footnote 79: Some critics of reg-neg have questioned whether it has actually achieved these benefits in practice.80 But these criticisms turn on **erroneous calculations** of the **duration** of various rule-making proceedings, and **unfair comparisons** of traditional rulemaking and reg-neg, which tends, **by design**, to involve more **complicated** and **contentious** issues than garden-variety rulemaking.81 These critics also point out that negotiated rulemaking has largely fallen into disuse, but this is **not because** it is **ineffective**. Rather, individual agencies perceive reg-neg as diluting their regulatory authority, because interested parties are brought into the process during the drafting of a proposed rulemaking, and agencies are deterred by the up-front cost of reg-neg.82 For its part, OMB perceives rules produced through reg-neg as less amenable to OMB input because they represent a compromise between the responsible agency and interested parties.83 But OMB can always review any rule before it is finalized.84 OMB can even participate in the negotiation.85 And the tendency of negotiated rulemaking to **attract** advance **support** from **outside of the government** is a benefit, whether or not OMB perceives it that way. The reformulated gasoline rule (RFG) is a **good example** of reg-neg achieving a **better result** than could have been accomplished in the absence of **stakeholder input** at the **drafting stage**.86 Like a rule with transnational implications, the RFG rule was a **good candidate** for reg-neg because of its **complexity**, and because collaboration with affected parties and other regulators would result in **better information** than the convening agency could obtain by itself.87 The process brought together thirty-five interested parties, including oil interests, alcohol fuel producers, environmental advocates, automotive manufacturers, state-level regulators, and the Department of Energy.

### 4

#### Will pass now- Biden pressure and timing key

Shannon Pettypiece, 10-14-2021, "White House pushing Congress to reach deal on spending bill soon," NBC News, https://www.nbcnews.com/politics/white-house/white-house-pushing-congress-reach-spending-bill-deal-soon-n1281567

White House officials are signaling to Congress that the time is running short for negotiations over President Joe Biden's infrastructure and social spending packages and that they want a deal to get done quickly.

A person familiar with the White House's thinking said that while Biden believes good progress has been made in negotiations, he thinks it is crucial to pass the bills soon, and officials are pushing members to do so.

White House press secretary Jen Psaki said Thursday, "The time for negotiations is not unending, and we are eager to move forward, we are eager to deliver on what he promised to the American people." She said that the White House wasn't setting any deadlines but that "it is time to move forward with negotiations."

#### While popular, the plan costs political capital—trades off.

Carstensen 21—(Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School). Peter C. Carstensen. February 2021. “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>.

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

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

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

#### The bill solves grid cybersecurity.

Carney 21—(senior policy advisor at Nossaman LLC, former US Representative, former professor of political science at Penn State University). Chris Carney. 8/6/2021. "The US Senate Infrastructure Bill: Securing Our Electrical Grid Through P3s and Grants." <https://www.jdsupra.com/legalnews/the-us-senate-infrastructure-bill-4989100/>.

As we begin to better understand the main components of the Infrastructure Investment and Jobs Act that the US Senate is working to pass this week, it is clear that public-private partnerships ("P3s") are a favored funding mechanism of lawmakers to help offset high costs associated with major infrastructure projects in communities. And while past infrastructure bills have used P3s for more conventional projects, the current bill also calls for P3s to help pay for protecting the US electric grid from cyberattacks. Responding to the increasing number of cyberattacks on our nation’s infrastructure, and given the fragile physical condition of our electrical grid, the Senate included provisions to help state, local and tribal entities harden electrical grids for which they are responsible.

Section 40121, Enhancing Grid Security Through Public-Private Partnerships, calls for not only physical protections of electrical grids, but also for enhancing cyber-resilience. This section seeks to encourage the various federal, state and local regulatory authorities, as well as industry participants to engage in a program that audits and assesses the physical security and cybersecurity of utilities, conducts threat assessments to identify and mitigate vulnerabilities, and provides cybersecurity training to utilities. Further, the section calls for strengthening supply chain security, protecting “defense critical” electrical infrastructure and buttressing against a constant barrage of cyberattacks on the grid. In determining the nature of the partnership arrangement, the size of the utility and the area served will be considered, with priority going to utilities with fewer available resources.

Section 40122 compliments the previous section as it seeks to incentivize testing of cybersecurity products meant to be used in the energy sector, including SCADA systems, and to find ways to mitigate any vulnerabilities identified by the testing. Intended as a voluntary program, utilities would be offered technical assistance and databases of vulnerabilities and best practices would be created. Section 40123 incentivizes investment in advanced cybersecurity technology to strengthen the security and resiliency of grid systems through rate adjustments that would be studied and approved by the Secretary of Energy and other relevant Commissions, Councils and Associations.

Lastly, Section 40124, a long sought-after package of cybersecurity grants for state, local and tribal entities is included in the bill. This section adds language that would enable state, local and tribal bodies to apply for funds to upgrade aging computer equipment and software, particularly related to utilities, as they face growing threats of ransomware, denial of service and other cyberattacks. However, under Section 40126, cybersecurity grants may be tied to meeting various security standards established by the Secretary of Homeland Security, and/or submission of a cybersecurity plan by a grant applicant that shows “maturity” in understanding the cyber threat they face and a sophisticated approach to utilizing the grant.

While the final outcome of the Infrastructure Investment and Jobs Act may still be weeks or months away, inclusion of these provisions not only demonstrates a positive step forward for the application of federal P3s and grants generally, they also show that Congress recognizes the seriousness of the cyber threats our electrical grids face. Hopefully, through judicious application of both public-private partnerships and grants, the nation can quickly secure its infrastructure from cyberattacks.

#### Goes nuclear.

Klare 19—(professor emeritus of peace and world security studies at Hampshire College). Michael Klare. November 2019. “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation.” Arms Control Association. <https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation>.

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.12 The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.13

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”14

### 5

#### Federal anti-trust actions draw anti-trust resources away from targeting abuses in other markets:

Mark McCareins, 8/19/2019 (KELLOGG SCHOOL OF MANAGEMENT AT NORTHWESTERN UNIVERSITY, “Why Antitrust Regulators Don’t Scare Big Tech,” <https://insight.kellogg.northwestern.edu/article/why-antitrust-regulators-dont-scare-big-tech>, Retrieved 8/5/2021)

In McCareins’s view, these large businesses have to date played within the **antitrust rules** to keep markets competitive. **Large-scale government investigations** like the ones the DOJ and **FTC** plan could not only prove costly and ineffective, but could also **draw resources away** from targeting actual abuses in other markets. “**It’s a trade-off**,” he says. “If regulators bring a highly speculative case in one of these big-name markets because they think it will show America that they are tough on regulation, and they lose—and while they’ve been doing that, they let **20 other markets go unattended**—I don’t know if that’s a good allocation of our prosecutorial resources. The Antitrust Division’s loss earlier this year in the ATT/Time Warner merger litigation is an example of the government rolling the dice with a speculative case and limited resources. One would think with respect to the current tech investigations that the government cannot afford a repeat of the ATT/Time Warner outcome.”

#### B) Enforcement of Biden’s antitrust initiatives are key to food security:

Rhonda Perry, 7/29/2021 (executive director of the Missouri Rural Crisis Center, “Biden executive order to promote competition in agriculture is a good first step,” <https://missouriindependent.com/2021/07/29/biden-executive-order-to-promote-competition-in-agriculture-is-a-good-first-step/>, Retrieved 8/7/2021)

Earlier this month, President Joe Biden issued an executive order that takes significant action to reduce the trend of corporate consolidation, increase competition and deliver concrete benefits to America’s consumers, workers, farmers and small businesses. The Missouri Rural Crisis Center, a statewide farm and rural membership organization representing the interests of independent family farms and rural communities, has long led the call for action to stop further corporatization and concentration within agriculture and our food system. President Biden and his administration’s commendable effort to level the playing field and increase fairness and competition within our food, livestock and agricultural industries is a **hopeful first step** in addressing the **corporate control of our food production**, processing and distribution that has threatened our economies, national security, water and air, climate and democratic process. The status quo has severely impacted our ability to have a **safe and secure food system**, endangered the livelihoods of independent family farmers and has extracted huge amounts of wealth from our rural communities. For example, today, most of the hogs in the United States are owned or controlled by enormous factory farm corporations (50% of the hog market is controlled by two foreign-owned meatpackers — Chinese-owned Smithfield Foods and Brazilian-owned JBS). Over the last three decades, factory farm corporations (the biggest now owned by foreign corporations with ties to foreign governments) have put hundreds of thousands of independent hog producers out of business–which resulted in putting thousands of local independently owned processors out of business. A family farm system is the solution. We need strong action to combat the corporate concentration and vertical integration of our food supply. The COVID-19 pandemic clearly demonstrated the fragility of this corporate model by its inability to adequately respond to the unfolding crisis. Plant shutdowns and slowdowns caused record high meat prices for consumers at the supermarket while independent family farm producers received low prices for their livestock. The truth is that we need more family farmers and more local processors in our food system. We need policies that lift up diversification and decentralization of our food supply, for the betterment of both farmers and consumers and **for the future of food security.** The executive order focuses on strengthening and **enforcing antitrust laws**, which is a **strong first step in decentralizing our food system** and promoting independent family farmers instead of a few multinational corporations that have no accountability to our nation, natural resources or communities.

#### Cross apply food shocks impact from the 1AC

### 1NC – Patent

#### This is not an advantage--- it is non-linear legal world salad

#### First- no slow growth now

Crowley ’20 (Joseph Crowley (born March 16, 1962) is an American politician and consultant who served as U.S. Representative from New York's 14th congressional district from 1999 to 2019. He was defeated by Democratic primary challenger Alexandria Ocasio-Cortez in what was viewed as one of the greatest upsets of the 2018 midterm elections.[1] During his tenure, Crowley served as Chair of the House Democratic Caucus from 2017 to 2019, as well as the local chairman of the Queens County Democratic Party from 2006 to 2019. He previously served in the New York State Assembly from 1987 to 1998.[2][3] After leaving Congress, he joined the Washington, D.C., lobbying and law firm Squire Patton Boggs.[4], “Why Biden must rely on innovation to rejuvenate the economy”, <https://fortune.com/2020/11/18/biden-economic-recovery-plan-coronavirus-innovation/>, November 18, 2020)

**Made in America. It seems those three words will define President-elect Joe Biden’s approach to rejuvenating an American economy that continues to be pummeled by the ongoing coronavirus pandemic.** But looking closer at his platform, it seems Biden’s actual approach to economic recovery in the face of the coronavirus will be defined by three other terms: invest, provide, and support. **Biden has made clear through policy proposals that the U.S. needs to kick-start its struggling economy through a heavy focus on one of America’s true strengths: innovation.** His plan shows a strong desire to invest in research and development activities in order to increase demand for domestic goods and services while creating high-quality jobs. He has also laid out proposals to provide incentives such as tax credits for businesses that are innovating, and he outlined a path to support an economically viable environment for U.S. businesses to keep their operations here and combat offshoring. Markets have rallied in response to reported positive results for the Pfizer/BioNTech and Moderna vaccines, but that isn’t indicative of truly sustainable economic progress. **Biden’s plan for lasting economic recovery leverages the power of innovation in the U.S. in an attempt to boost our industrial and technological capacities. It’s clear that Biden recognizes the role that American small and midsize businesses, particularly in the manufacturing sector, will play in an economic rebound effort that he compares to our country’s resilience during World War II.** Tackling COVID-19 will be job No. 1 in the Biden administration, but these growth tactics are sure to play a role in combating the pandemic’s negative economic impact. First, Biden’s proposals call for a $400 billion investment in federal purchases for products made by American workers. Biden hopes to both spur demand and increase job growth for small businesses through this investment, which will likely mirror the 2009 Recovery Act in many ways, and which will include the purchase of billions of dollars’ worth of clean vehicles and products, materials such as steel and cement, and other equipment. The investment would also include a commitment to purchase advanced tech—a sign of his administration’s confidence in a digital revolution centered on artificial intelligence (A.I.), machine learning, and telecom. Further, Biden has supported direct federal funding for research and development activities in the form of a $300 billion investment in his first term that would be directed toward the advancement of critical “new industries and technologies” such as 5G and A.I. And, although the details of the proposal are not fully disclosed, Biden’s team has also thrown support behind the creation of a “credit facility” that will inject capital into small and midsize manufacturing firms in order for them to modernize and become more competitive. **These sorts of support measures are aimed at ensuring new products emerge from the U.S. and that America remains a mecca of innovation where the next Apple, IBM, Microsoft, or SpaceX can flourish.** Although addressing the Tax Cuts and Jobs Act in the form of a Biden tax reform plan likely won’t be on the table for some time, the administration very likely will work to implement tax tools for American businesses to leverage in order to bolster economic viability. Specifically, his team has claimed it will “put a special focus on the backbone of American manufacturing—the thousands of small and medium-sized manufacturers throughout the country.” In order to encourage business growth and innovation, a Biden administration would push for a 10% tax credit for companies that invest in “revitalizing closed or nearly closed facilities, retooling or expanding facilities, and bringing production or service jobs back to the U.S.” Alongside the tax credit, Biden has also pitched a 10% surtax for companies that offshore manufacturing operations that would seemingly increase the corporate tax rate to 30.8%. That’s a sure sign that for him, innovation in the homeland is priority No. 1. Biden has signaled, however, that these types of incentives wouldn’t just be available to one specific industry. This is indicative of the President-elect’s belief that innovation efforts for all American small and midsize businesses will be central to relief efforts. Confronting an adversarial China has already been listed as a top priority for the Biden administration. This will be a necessary task if the U.S. wants to increase innovation efforts and maintain a stable role in the global supply chain. However, this approach will need to not only concentrate on pushing back against China, which boasts cheap labor and infrastructure development for businesses tempted by offshoring, but also ensure that the U.S. can create an equally appealing environment for innovators. Biden’s approach to tax incentives and penalties seems to be a strong first step toward creating that environment, but more will need to be done. His team has proposed invigorating public-private partnerships, and even investing $50 billion in workforce development programs, a necessity when access to technical labor has been a consistent problem in the U.S. Creating a support system for innovation will also involve ensuring that our workforce can keep pace with what will hopefully be a hare-paced development of new technologies. President-elect Biden seems to understand that. As stated on his published platform, “As President, Biden will ensure that employers receiving federal funds give all affected employees advance notice of technology changes and automation in the workplace, put their employees at the front of the line for new jobs, and offer paid skills training so that employees can succeed in new jobs.” For Democrats excited by the notion of a Biden presidency, the truth is that control of the Senate is a concern. In order for any of these proposals to become a reality, Biden will likely have to keep his word and leverage his past strengths as a master in bipartisanship. To start, Biden should look toward existing incentives that already benefit from bipartisan support. The Research and Development Tax Credit has historically been a boon for American small and medium-size businesses, and has been recognized by members of both parties as a viable tool for spurring economic recovery. In fact, several pieces of bipartisan legislation, including Sen. Chris Coons’ (D-Del.) Forward Act, advocate for strengthening the credit. A recent column from House Minority Leader Kevin McCarthy (R-Calif.) and Rep. Kevin Brady (R-Texas) even signaled support for doubling the credit to foster greater innovation. President Obama received criticism in the wake of the 2008 crash for not doing enough to generate a robust recovery, even though his efforts were enough to mitigate the crisis. Biden should work to avoid any chance of similar critiques by focusing heavily on creating tools for sustainable economic growth. **Regardless of the approach to reinvigorating the U.S. economy, innovation is sure to play a central role.**

#### Second - Schuster and Day concludes NEG- says do NOT increase antitrust in regards to patent

Schuster and Day 21 (W. Michael Schuster and Gregory Day – University of Georgia Terry College of Business Assistant Professors, Aug 13, 2021, “Colluding Against a Patent”, https://ssrn.com/abstract=3799477, accessed 8/30/21, DL)

**CONCLUSION As described herein, the patent system has the capacity to encourage innovation by affording a specific set of exclusionary rights. However, certain firms undertake strategies that create power extending beyond the scope of their patent rights, which can damage competition. In response, some market participants attempt to remedy this harm by collectively bargaining to even the playing field. These behaviors have been alleged to violate the antitrust laws. We argue that application of antitrust laws in this instance is a policy error. Collective negotiations have the capacity to undercut abusive behaviors that may be undertaken by mass patent aggregators or those who ignore their FRAND obligations. And as shown through our analysis, anticompetitive behaviors such as aggregation of huge numbers of patents can undercut the incentive to spend money on research, incentivize the filing of relatively lower value patents, and increase market concentration. With this in mind, we argue that antitrust should not be used to stifle collective negotiation where the opposing party enjoys monopoly power. Moreover, we address the implications of our proposal, showing that while it discourages anticompetitive behaviors, it should not harm patent owners who behave in good faith.**

#### Third- Ghosh et al is an AMICUS BRIEF from 2012 about the impacts of Monsanto winning- which they won in 2013- their impact brink is way too outdated- impacts should have been triggered by slow growth by now

#### Fourth-their Lim card concludes FTC and DOJ should incorporate behavioral economics in patent analyses- not the aff

Lim 17 (Daryl Lim – The John Marshall Law School Associate Professor and Center for Intellectual Property Director, June 29, 2017, “Retooling the Patent-Antitrust Intersection: Insights from Behavioral Economics”, https://ssrn.com/abstract=2953031, accessed 8/30/21, DL)

V. CONCLUSION Regulating innovation involves making hard choices, but hard choices are also opportunities for courts to articulate their beliefs and examine the reasons that govern their choices. **Antitrust analysis needs to find the line separating acceptable conduct from those that should be censured, and behavioral economics offers an important, but incremental patch to improve the design and application of antitrust policies to help courts and government agencies get there**. The first step is for decision makers to recognize the signs that they are in a minefield of biases, slow down, and tap on the insights behavioral economics offers. It links causation to theory. It gives more weight to qualitative evidence rather than rely primarily on abstract econometric data. Market power analysis can be made more sensitive to evidence of lock-ins and the inability of licensees to engage in life-cycle pricing. Courts are empowered to use intent evidence, and determine if a patentee’s procompetitive justifications are merely pretextual. **In developing behavioral economics at the patent-antitrust intersection, the FTC and DOJ would be natural laboratories to test and refine its various applications to cartel, monopolization, and merger scenarios.431 The process of developing behavioral antitrust works best at the agencies “where it is possible to test a default rule repeatedly and understand how individuals will react to that default rule**.”432 **The FTC has used behavioral economics in its consumer protection cases.433 There are PhD-level economists that can marshal their expertise toward developing algorithms and choice architecture frameworks for adjudicating patent-antitrust disputes that courts can consider, and in appropriate cases, endorse**.**434 Both agencies have expertise in complex and important industries undergirded by patents such as pharmaceuticals and consumer electronics.** Federal appellate courts also serve a critical role in that they let district courts and parties test drive rules informed by behavioral economics and see if they succeed in “nudging” the market in the right direction. **Like personalized medicine that refines a “one- size-fits-all” approach to healthcare, behavioral antitrust does not displace the neoclassical antitrust analysis. Rather, like a patch, it fine-tunes its implementation.**

#### Fifth – Collapse doesn’t cause war

#### Clary 15 – PhD in political science from MIT, MA in national security affairs, postdoctoral fellow, Watson Institute for International Studies, Brown University

(Christopher, “Economic Stress and International Cooperation: Evidence from International Rivalries”, 4/25/15, <http://poseidon01.ssrn.com/delivery.php?ID=719105092024097121124100018083011118038069081083039091121092126090087109098065027066123029119022059121027020065094083094082064017078060077029075100073095001126072113085042032004073009085104092002020027086072104017023079122098123108013079003000082124078&EXT=pdf>, MIT political science department)

Do economic downturns generate pressure for diversionary conflict? Or might downturns encourage austerity and economizing behavior in foreign policy? This paper provides new evidence that economic stress is associated with conciliatory policies between strategic rivals. For states that view each other as military threats, the biggest step possible toward bilateral cooperation is to terminate the rivalry by taking political steps to manage the competition. Drawing on data from 109 distinct rival dyads since 1950, 67 of which terminated, the evidence suggests rivalries were approximately twice as likely to terminate during economic downturns than they were during periods of economic normalcy. This is true controlling for all of the main alternative explanations for peaceful relations between foes (democratic status, nuclear weapons possession, capability imbalance, common enemies, and international systemic changes), as well as many other possible confounding variables. This research questions existing theories claiming that economic downturns are associated with diversionary war, and instead argues that in certain circumstances peace may result from economic troubles. I define a rivalry as the perception by national elites of two states that the other state possesses conflicting interests and presents a military threat of sufficient severity that future military conflict is likely. Rivalry termination is the transition from a state of rivalry to one where conflicts of interest are not viewed as being so severe as to provoke interstate conflict and/or where a mutual recognition of the imbalance in military capabilities makes conflict-causing bargaining failures unlikely. In other words, rivalries terminate when the elites assess that the risks of military conflict between rivals has been reduced dramatically. This definition draws on a growing quantitative literature most closely associated with the research programs of William Thompson, J. Joseph Hewitt, and James P. Klein, Gary Goertz, and Paul F. Diehl.1 My definition conforms to that of William Thompson. In work with Karen Rasler, they define rivalries as situations in which “[b]oth actors view each other as a significant politicalmilitary threat and, therefore, an enemy.”2 In other work, Thompson writing with Michael Colaresi, explains further: The presumption is that decisionmakers explicitly identify who they think are their foreign enemies. They orient their military preparations and foreign policies toward meeting their threats. They assure their constituents that they will not let their adversaries take advantage. Usually, these activities are done in public. Hence, we should be able to follow the explicit cues in decisionmaker utterances and writings, as well as in the descriptive political histories written about the foreign policies of specific countries.3 Drawing from available records and histories, Thompson and David Dreyer have generated a universe of strategic rivalries from 1494 to 2010 that serves as the basis for this project’s empirical analysis.4 This project measures rivalry termination as occurring on the last year that Thompson and Dreyer record the existence of a rivalry. Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice. Economic Crisis Leads to Austerity Economic crises generate pressure for austerity. Government revenues are a function of national economic production, so that when production diminishes through recession, revenues available for expenditure also diminish. Planning almost invariably assumes growth rather than contraction, so the deviation in available revenues compared to the planned expenditure can be sizable. When growth slowdowns are prolonged, the cumulative departure from planning targets can grow even further, even if no single quarter meets the technical definition of recession. Pressures for austerity are felt most acutely in governments that face difficulty borrowing to finance deficit expenditures. This is especially the case when this borrowing relies on international sources of credit. Even for states that can borrow, however, intellectual attachment to balanced budgets as a means to restore confidence—a belief in what is sometimes called “expansionary austerity”—generates incentives to curtail expenditure. These incentives to cut occur precisely when populations are experiencing economic hardship, making reductions especially painful that target poverty alleviation, welfare programs, or economic subsidies. As a result, mass and elite constituents strongly resist such cuts. Welfare programs and other forms of public spending may be especially susceptible to a policy “ratchet effect,” where people are very reluctant to forego benefits once they have become accustomed to their availability.6 As Paul Pierson has argued, “The politics [of welfare state] retrenchment is typically treacherous, because it imposes tangible losses on concentrated groups of voters in return for diffuse and uncertain gains.”7 Austerity Leads to Cutbacks in Defense Spending At a minimum, the political costs of pursuing austerity through cutbacks in social and economic expenditures alone make such a path unappealing. In practice, this can spur policymakers to curtail national security spending as a way to balance budgets during periods of economic turmoil. There is often more discretion over defense spending than over other areas in the budget, and it is frequently distantly connected to the welfare of the mass public. Many militaries need foreign arms and foreign ammunition for their militaries, so defense expenditures are doubly costly since they both take up valuable defense budget space while also sending hard currency overseas, rather than constituencies at home. Pursuing defense cuts may also conform to the preferences of the financial sector, which shows a strong aversion to military conflict even if that means policies of appeasement and conciliation.8 During periods of economic expansion, the opportunity costs associated with defense expenditure—the requirement for higher taxes or foregone spending in other areas—are real but acceptable. Economic contraction heightens the opportunity costs by forcing a choice between different types of spending. There is a constituency for defense spending in the armed services, intelligence agencies, and arms industries, but even in militarized economies this constituency tends to be numerically much smaller than those that favor social and economic expenditures over military ones. Defense Cutbacks Encourage Rapprochement An interest in defense cutbacks can lead to conciliatory behavior through two paths. First, the cutbacks themselves serve as a concrete signal to adversaries that the military threat posed by the economically distressed state is declining. This permits the other state to halt that portion of defense spending dedicated to keeping up, breaking the back of ongoing arms races through reciprocated, but non-negotiated moves. Unilateral conventional force reductions were a major element of Gorbachev’s foreign policy in the late 1980s, alongside negotiated strategic arms control, and diplomatic efforts to achieve political understandings with the United States.9 Gorbachev similarly used force reductions in Afghanistan, Mongolia, and the Soviet Far East to signal to China in 1987 that he was serious about political negotiations.10 Elsewhere, non-negotiated, tit-for-tat military redeployments facilitated Argentina-Brazil rapprochement.11 Second, leaders may believe cutbacks are necessary, but would be dangerous in the absence of negotiated improvements with traditional foes. Economic downturns can serve as motivation to pursue arms control or political settlement. During periods of normalcy, such outcomes would be positives, but are viewed as “too hard” by political leaders that move from one urgent problem to the next. During periods of economic crisis, however, arms control or political improvements might allow for much needed cuts in defense spending, and are pursued with greater vigor. The Johnson administration attempted both unilateral and negotiated arms limitations because of budgetary concerns as President Johnson and Secretary McNamara struggled to pay for the “Great Society” domestic programs and the increasingly costly Vietnam War. They first attempted unilateral “caps” on costly nuclear forces and anti-ballistic missile defenses and when this failed to lead to a reciprocal Soviet response they engaged in formal arms control talks. Détente continued in the Nixon administration, accelerating in 1971 and 1972, simultaneous with rising budget deficits and inflation so serious that Nixon instituted price controls. Nixon’s decision to sharply limit anti-ballistic missile defenses to enable arms control talks was contrary to his strategic views, but necessitated by a difficult budgetary environment that made paying for more missile defense emplacements unrealistic.12 As Nixon told his national security advisor Kissinger in an April 1972 discussion of ballistic missile and anti-ballistic missile developments: “You know we've got a hell of a budget problem. We've got to cut it down, we've got to cut 5 billion dollars off next year's defense budget. So, I don't want to [inaudible: do it?] unless we've got some settlement with the Russians.”13 In practice, unilateral defense cuts and force reductions are frequently combined with negotiated political agreements in a sequential, iterative fashion, where a unilateral reduction will signal seriousness that opens the way for political agreement, which in turn permits even deeper reductions. Defense cuts and force reductions are not only a means to achieve rivalry termination, but also a goal in and of themselves that rivalry termination helps secure. Leaders are seeking resources from defense they can use elsewhere. Thus when Argentine leader Raul Alfonsín campaigned for the need for drastic budgetary austerity, his specific “platform was the reduction of military spending to use it for the other ministries, connected with the concept of eliminating the hypothesis of conflict” with Argentinian rivals, according to Adalberto Rodríguez Giavarini, who served in Alfonsín’s ministry of defense (and later was Argentina’s foreign minister).14 Similarly, Gorbachev was motivated to reduce arms in the late 1980s because he determined it was necessary to cut Soviet defense spending and defense production, and repurpose part of the defense industry to make consumer and civilian capital goods, according to contemporary U.S. Central Intelligence Agency classified assessments.15 Thus the “main reason” why strategic arms control breakthroughs occurred from 1986 to 1988 and the Soviet Afghan intervention concluded in 1989 was a realization within the Politburo of “excessively high expenditures on defense,” according to Nikolai Ryzhkov, Gorbachev’s prime minister.16 Economic Downturns Provoke Strategic Reassessment: Threat Deflation and Prioritization Economic downturns encourage leaders to seek new ideas to use to frame their policy problems. During periods of economic difficulty, elites can come to realize that their problems are not amenable to old solutions, and search for new ideas.17 During an economic crisis, politics and policy are “more fluid,” as old answers seem stale and insufficient.18 An ideational entrepreneur that can link economic lemons to foreign policy lemonade can find a patron when leaders are casting about for ways to reframe the world in acceptable ways to their peers and publics. The behavior of an old foe is often ambiguous, and can be viewed as either injurious to one’s interests or neutral toward them. During periods of normalcy, the motivation of defense establishments is tilted toward threat and danger. During periods of economic crisis, national leaders have a counteracting motivation to downplay such dangers, so that the threats faced by a nation are manageable through available resources. Economic difficulties provide a motivation for leaders to view equivocal signals from the international system in a way that is benign. To the extent that rivalries are perpetuated because of threat inflation, economic downturns provide incentives to deflate the threat, potentially disrupting cycles of competition and enmity. South Korean president Kim Dae-jong came to power in the aftermath of the 1998 Asian economic crisis, pursued a “sunshine policy” toward the North, cut South Korean defense spending in nominal and real terms, and pursued a policy toward North Korea that political scientist Dong Sun Lee called “threat deflation” despite the growing North Korean nuclear weapons threat.19 Economic crises can also spur strategic reassessment through another channel. If leaders view economic problems as structural, rather than a temporary gale, they may come to question whether available national resources are sufficient to confront all of the national threats identified in the past. This creates incentives to economize threats, seeking political settlements where possible in order to focus remaining resources on competitions that can be won. A concrete example: in 1904, the chancellor to the Exchequer wrote his cabinet colleagues: “[W]e must frankly admit that the financial resources of the United Kingdom are inadequate to do all that we should desire in the matter of Imperial defense.”20 The result was a British decision to minimize political disagreement with the United States and focus on other defense challenges. While such a decision is in line with realist advice, it occurred not when the power trajectories were evident to British decisionmakers but when the budget situation had reached a crisis that could no longer be ignored. Economic Downturns Increase Incentives for International Economic Cooperation Economic downturns not only create incentives to cut spending, they encourage vigorous pursuit of opportunities for economic cooperation. This, too, can engender conciliatory behavior. Economic downturns can increase motives to pursue trade and investment. Rivalries with old foes often directly impinge on trade and investment with the adversary and may indirectly impinge on trade and investment with third parties, especially if the rivalry is viewed as being likely to generate disruptive military conflict. Additionally, economic aid is sometimes used as an inducement for adversaries to set aside a political dispute. This aid can either serve as a side payment from one rival to another, or it can be offered by a third party to one or both rivals as an incentive to set aside lingering disputes. Such aid is more attractive during periods of economic turmoil than during periods of comparative normalcy. In South Asia, India and Pakistan struggled from 1947 to 1960 with how to manage water resources in the Indus Rivers basin, inheriting a canal system meant to service pre-partitioned India. Pakistan, suffering an economic downturn, and India, reliant on foreign aid to avert economic crisis, agreed to an Indus Waters Treaty in 1960 to resolve the lingering dispute, made possible in substantial part because of World Bank financing that was especially attractive to the struggling economies. In the Middle East, Egypt and Israel made the hard choices necessary for the Camp David accord in 1979 precisely because the Sadat and Begin governments faced difficult economic situations at home that made the U.S. aid guarantee in exchange for a peace agreement especially attractive.21 In 1982, the Yemen’s People’s Republic agreed to stop its attempts to destabilize Oman, because otherwise Yemen would not receive economic assistance from Arab oil producing states that it desperately needed.22 In the late 1990s, El Niño-induced flooding devastated Ecuador and Peru, spurring reconciliation as leaders sought to increase trade, secure investment, and slash military expenditures so they could be used at home.23 As one Western diplomat assessed at the time, Ecuador and Peru “have decided it's better to see reason…. They see foreign companies eager to invest in South America, and if Peru and Ecuador are in conflict, it makes them less attractive than, say, Argentina or Brazil or Chile for investment purposes. That's the last thing either country wants.”24 Economic Downturns Can Cause Meaningful Leadership Change The above mechanisms have identified how economic difficulties can alter the preferences of an incumbent leader. Additionally, economic crises can lead to leadership turnover and, during periods of difficulty, the selection process that determines new leadership can loosen ideological strictures that relate to extant rivalries. Leaders may be selected based on judgments about their ability to cope with economic problems, with greater elite acceptance of ideological heterogeneity in foreign policy beliefs than in periods of normalcy.25 In Stephen Brooks and William Wohlforth’s words, “If everything is going well or is stable, then why select leaders who might subvert the triedand-true identity? But if that identity is leading to increased material difficulties, pressure for change will likely mount. In these circumstances, those who are willing to alter or adjust the hallowed precepts of the existing identity and its associated practices are more likely to assume power.”26 Economic crisis, then, can spur incumbent leaders to either abandon the “baggage” of rivalry or facilitate the selection of new leaders that do not carry such baggage. The most well-known example of an incumbent selectorate looking for a reformer, even one without much foreign policy experience, involves Mikhail Gorbachev’s ascension to the Soviet premiership. In political scientist Jerry Hough’s words, “If the rate of economic growth continued to decline, if administrative and labor efficiency continued to fall, if corruption was not punished, these conditions would have dangerous consequences for the [Soviet Union in the] 1980s and 1990s…. Gorbachev’s promotion was an answer to these concerns.”27

### 1NC – Agriculture

#### No environment impact - redundancy, intervening actors, boundaries will never be crossed

Kareiva & Carranza 18 (Peter Kareiva & Valerie Carranza. Institute of the Environment and Sustainability,. “Existential Risk Due to Ecosystem Collapse: Nature Strikes Back.” Volume 102, September 2018, Pages 39-50)

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than .001% per year (Rockström et al., 2009). There is little evidence that this particular .001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook et al., 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species number declines locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al 2017; Vellend et al., 2013). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk. What about the remaining eight planetary boundaries? Stratospheric ozone depletion is one—but thanks to the Montreal Protocol ozone depletion is being reversed (Hand, 2016). Disruptions of the nitrogen cycle and of the phosphorous cycle have also been proposed as representing potential planetary boundaries (one boundary for nitrogen and one boundary for phosphorous). There are compelling data linking excesses in these nutrients to environmental damage. For example, over-application of fertilizer in Midwestern USA has led to dead zones in the Gulf of Mexico. Similarly, excessive nitrogen has polluted groundwater in California to such an extent that it is unsuitable for drinking and some rural communities are forced to drink bottled water. However, these impacts are local. At the same time that there is too much N loading in the US, there is a need for more N in Africa as a way of increasing agricultural yields (Mueller et al., 2012). While the disruption of nitrogen and phosphorous cycles clearly perturb local ecosystems, end-of-the-world scenarios seem a bit far-fetched. Another hypothesized planetary boundary entails the conversion of natural habitats to agricultural land. The mechanism by which too much agricultural land could cause a crisis is unclear—unless it is because land conversion causes so much biodiversity loss that is species extinctions that are the proximate cause of an eco-catastrophe. Excessive chemical pollution and excessive atmospheric aerosol loading have each been suggested as planetary boundaries as well. In the case of these pollution boundaries, there are well-documented mechanisms by which surpassing some concentration of a pollutant inflicts severe human health hazards. There is abundant evidence linking chemical and aerosol pollution to higher mortality and lower reproductive success in humans, which in turn could cause a major die-off. It is perhaps appropriate then that when Hollywood envisions an unlivable world, it often invokes a story of humans poisoning themselves. That said, it is doubtful that we will poison ourselves towards extinction. Data show that as nations develop and increase their wealth, they tend to clean up their air and water and reduce environmental pollution (Flörke et al., 2013; Hao & Wang, 2005). In addition, as economies become more circular (see Mathews & Tan, 2016), environmental damage due to waste products is likely to decline. The key point is that the pollutants associated with the planetary boundaries are so widely recognized, and the consequences of local toxic events are so immediate, that it is reasonable to expect national governments to act before we suffer a planetary ecocatastrophe.

#### Food insecurity doesn’t cause war

Vestby et al 18 [Jonas Vestby, Doctoral Researcher at the Peace Research Institute Oslo, Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography, “Does hunger cause conflict?”, 5/18/18, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests. Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

#### No warming impact and emissions are inevitable

Judith Curry 19, President of Climate Forecast Applications Network (CFAN), Professor Emerita of Earth and Atmospheric Sciences at the Georgia Institute of Technology, Ph.D. in atmospheric science from the University of Chicago, 2/9/19, “Statement to the Committee on Natural Resources of the United States House of Representatives,” https://curryja.files.wordpress.com/2019/02/curry-testimony-house-natural-resources.pdf

The urgency (?) of CO2 emissions reductions In the decades since the 1992 UNFCCC Treaty, global CO2 emissions have continued to increase, especially in developing countries. In 2010, the world’s governments agreed that emissions need to be reduced so that global temperature increases are limited to below 2 degrees Celsius.17 The target of 2oC (and increasingly 1.5oC)18 remains the focal point of international climate agreements and negotiations. The original rationale for the 2oC target is the idea that ‘**tipping points**’ − abrupt or nonlinear transition to a different climate state − become likely to occur once this threshold has been crossed, with consequences that are largely uncontrollable and beyond our management. The IPCC AR5 considered a number of potential tipping points, including ice sheet collapse, collapse of the Atlantic overturning circulation, and permafrost carbon release. Every single catastrophic scenario considered by the IPCC AR5 (WGII, Table 12.4) has a rating of **very unlikely** or **exceptionally unlikely** and/or has **low confidence**. The only tipping point that the IPCC considers likely in the 21st century is disappearance of Arctic **summer** sea ice (which is fairly **reversible**, since **sea ice freezes every winter**). In the **absence of tipping points** on the timescale of the 21st century, the 2oC limit iss more usefully considered by analogy to a highway speed limit:19 driving at 10 mph under the speed limit is not automatically safe, and exceeding the limit by 10 mph is not automatically dangerous, although the faster one travels the greater the danger from an accident. Analogously, the 2oC (or 1.5oC) limit should **not be taken literally as a real danger threshold**. An analogy for considering the urgency of emissions reductions is your 401K account: if you begin making contributions early, it will be easier to meet your retirement goals. Nevertheless, the 2oC and 1.5oC limits are used to motivate the urgency of action to reduce CO2 emissions. At a recent UN Climate Summit, (former) Secretary-General Ban Ki-moon warned that: “Without significant cuts in emissions by all countries, and in key sectors, the window of opportunity to stay within less than 2 degrees [of warming] will soon close forever.”20 Actually, this window of opportunity may remain open for quite some time. The implications of the **lower values of climate sensitivity** found by Lewis and Curry21 and other recent studies is that human caused warming is not expected to exceed the 2oC ‘danger’ level in the 21st century. Further, there is growing evidence that the RCP8.5 scenario for future greenhouse gas concentrations, which drives the largest amount of warming in climate model simulations, is **impossibly high**, requiring a combination of numerous borderline **impossible socioeconomic scenarios**.22 A **slower rate of warming** means there is **less urgency** to phase out greenhouse gas emissions now, and **more time** to find ways to **decarbonize the economy affordably** and with a minimum of **unintended consequences**. It also allows for the **flexibility to revise our policies** as further information becomes available. Is it possible that something truly dangerous and unforeseen could happen to Earth’s climate during the 21st century? Yes it is possible, but **natural climate variability** (including geologic processes) may be a more likely source of possible undesirable change than manmade warming. In any event, attempting to avoid such a dangerous and unforeseen climate by reducing fossil fuel emissions will be **futile** if natural climate and geologic processes are dominant factors. Geologic processes are an important factor in the potential instability of the West Antarctic ice sheet that could contribute to substantial sea level rise in the 21st century.23 Under the Paris Agreement, individual countries have submitted to the UNFCCC their Nationally Determined Contributions (NDCs). Under the Obama Administration, the U.S. NDC had a goal of reducing emissions by 28% below 2005 levels by 2025. Apart from considerations of feasibility and cost, it has been estimated24 using the EPA MAGICC model that this commitment will prevent 0.03oC in warming by 2100. When combined with current commitments from other nations, **only a small fraction of the projected future warming will be ameliorated by these commitments**. If climate models are indeed running too hot,25 then the amount of warming prevented would be even smaller. Even if emissions immediately went to **zero** and the projections of climate models are to be believed, the impact on the climate would **not be noticeable** until the 2nd half of the 21st century. Most of the expected benefits to the climate from the UNFCCC emissions reductions policy will be realized in the 22nd century and beyond. Attempting to use carbon dioxide as a control knob to regulate climate on decadal to century timescales is arguably **futile**. The UNFCCC emissions reductions policies have brought us to a point between a rock and a hard place, whereby the emissions reduction policy with its **extensive costs** and questions of feasibility are **inadequate for making a meaningful dent** in slowing down the expected warming in the 21st century. And the **real societal consequences** of climate change and extreme weather events (whether caused by manmade climate change or natural variability) **remain largely unaddressed**. This is not to say that a transition away from burning fossil fuels doesn’t make sense over the course of the 21st century. People prefer ‘clean’ over ‘dirty’ energy – provided that all other things are equal, such as reliability, security, and economy. However, assuming that current wind and solar technologies are adequate for providing the required amount and density of electric power for an advanced economy is misguided.26 The recent record-breaking cold outbreak in the Midwest is a stark reminder of the challenges of providing a reliable power supply in the face of extreme weather events, where an inadequate power supply not only harms the economy, but jeopardizes lives and public safety. Last week, central Minnesota experienced a natural gas ‘brownout,’ as Xcel Energy advised customers to turn thermostats down to 60 degrees and avoid using hot water.27 Why? Because the wind wasn’t blowing during an exceptionally cold period. Utilities pair natural gas plants with wind farms, where the gas plants can be ramped up and down quickly when the wind isn’t blowing. With bitter cold temperatures and no wind, there wasn’t enough natural gas. A transition to an electric power system driven solely by wind and solar would require a **massive amount of energy storage**. While energy storage technologies are advancing, massive deployment of **cost-effective energy storage** technologies is well beyond current capabilities.28 An unintended consequence of rapid deployment of wind and solar energy farms may be that **natural gas power plants become increasingly entrenched** in the power supply system. Apart from energy policy, there are a number of land use practices related to croplands, grazing lands, forests and wetlands that could increase the **natural sequestration** of carbon and have ancillary economic and ecosystem benefits.29 These co-benefits include **improved biodiversity**, **soil quality**, **agricultural productivity** and wildfire behavior modification. In evaluating the urgency of CO2 emissions reductions, we need to be realistic about what reducing emissions will actually accomplish. Drastic reductions of emissions in the U.S. will not reduce global CO2 concentrations if emissions in the **developing world**, particularly **China** and **India**, continue to increase. If we believe the climate model simulations, we would not expect to see any changes in extreme weather/climate events until late in the 21st century. The greatest impacts will be felt in the 22nd century and beyond, in terms of reducing sea level rise and ocean acidification. Resilience, anti-fragility and thrivability Given that emissions reductions policies are very costly, politically contentious and are not expected to change the climate in a meaningful way in the 21st century, **adaptation strategies** are receiving **increasing attention** in formulating responses to climate change. The extreme damages from recent hurricanes plus the recent billion dollar disasters from floods, droughts and wildfires, emphasize that the U.S. is highly vulnerable to current weather and climate disasters. Even worse disasters were encountered in the U.S. during the 1930’s and 1950’s. Possible scenarios of incremental worsening of weather and climate extremes over the course of the 21st century don’t change the fundamental storyline that many regions of the U.S. are not well adapted to the current weather and climate variability, let alone the range that has been experienced over the past two centuries. As a practical matter, adaptation has been driven by local crises associated with extreme weather and climate events, emphasizing the role of ‘surprises’ in shaping responses. Advocates of adaptation to climate change are not arguing for simply responding to events and changes after they occur; they are arguing for **anticipatory adaptation**. However, in adapting to climate change, we need to acknowledge that we cannot know how the climate will evolve in the 21st century, we are certain to be surprised and we will make mistakes along the way. ‘Resilience’ is the ability to ‘bounce back’ in the face of unexpected events. Resilience carries a connotation of returning to the original state as quickly as possible. The difference in impact and recovery from Hurricane Sandy striking New York City in 2012 versus the impact of Tropical Cyclone Nargis striking Myanmar in 200830 reflects very different vulnerabilities and capacities for bouncing back. To increase our resilience to extreme weather and climate events, we can ‘bounce forward’ to reduce future vulnerability by evolving our infrastructures, institutions and practices. Nicholas Taleb’s concept of antifragility31 focuses on learning from adversity, and developing approaches that enable us to thrive from high levels of volatility, particularly unexpected extreme events. Anti-fragility goes beyond ‘bouncing back’ to becoming even better as a result of encountering and overcoming challenges. Anti-fragile systems are dynamic rather than static, thriving and growing in new directions rather than simply maintaining the status quo. Strategies to increase antifragility include: economic development, reducing the downside from volatility, developing a range of options, tinkering with small experiments, and developing and testing transformative ideas. Antifragility is consistent with decentralized models of policy innovation that create flexibility and redundance in the face of volatility. This ‘innovation dividend’ is analogous to biodiversity in the natural world, enhancing resilience in the face of future shocks.32 Similar to anti-fragility, the concept of ‘thrivability’ has been articulated by Jean Russell:33 “It isn’t enough to repair the damage our progress has brought. It is also not enough to manage our risks and be more shock-resistant. Now is not only the time to course correct and be more resilient. It is a time to imagine what we can generate for the world. Not only can we work to minimize our footprint but we can also create positive handprints. It is time to strive for a world that thrives.” A focus on policies that support resilience, anti-fragility and thrivability avoids the hubris of thinking we can predict the future climate. The relevant questions then become: • How can we best promote the development of transformative ideas and technologies? • How much resilience can we afford? The threats from climate change (whether natural or human caused) are fundamentally regional, associated not only with regional changes to the weather/climate, but with local vulnerabilities and cultural values and perceptions. In the least developed countries, energy poverty and survivability is of overwhelming concern, where there are severe challenges to meeting basic needs and their idea of clean energy is something other than burning dung inside their dwelling for cooking and heating. In many less developed countries, particularly in South Asia, an overwhelming concern is vulnerability to extreme weather events such as floods and hurricanes that can set back the local economies for a generation. In the developed world, countries are relatively less vulnerable to climate change and extreme weather events and have the luxury of experimenting with new ideas: entrepreneurs not only want to make money, but also to strive for greatness and transform the infrastructure for society. Extreme weather/climate events such as landfalling major hurricanes, floods, extreme heat waves and droughts become catastrophes through a combination of large populations, large and exposed infrastructure in vulnerable locations, and human modification of natural systems that can provide a natural safety barrier (e.g. deforestation, draining wetlands). Addressing current adaptive deficits and planning for climate compatible development will **increase societal resilience** to future extreme events that may possibly be more frequent or severe in the future. Ways forward Climate scientists have made a forceful argument for a future threat from manmade climate change. Based upon our current assessment of the science, **the threat does not seem to be an existential one** on the time scale of the 21st century, even in its most alarming incarnation. However, the perception of manmade climate change as a near-term apocalypse and alignment with range of other social objectives has **narrowed the policy options that we’re willing to consider**.