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#### Business practices are ongoing conduct defined by the behaviors of many market participants

Kerry Lynn Macintosh 97, Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### ‘Prohibition’ must ban all instances of anticompetitive behavior

James Lane Buckley 91, Judge on the United States Court of Appeals for the District of Columbia Court, BA and JD from Yale University, Former Undersecretary for Security Assistance at the State Department, Former United States Senator from New York, “Hazardous Waste Treatment Council v. Reilly”, United States Court of Appeals for the District of Columbia Circuit, 938 F.2d 1390, 1395-1396, 1991 U.S. App. LEXIS 16095, 7/26/1991, Lexis

Petitioners claim that the EPA considers a state law to "act as a prohibition" under the regulation only when it bans all treatment, storage, and disposal within a State, and they point to the ALJ's statement, based on his reading of the preamble to the regulations, 45 Fed. Reg. at 33,395, that the EPA "appears to have construed the phrase 'act as a prohibition' in [paragraph (b)] as equivalent to an outright ban or refusal to accept hazardous waste for treatment, storage, or disposal." ALJ Decision at 112. Petitioners contend that the regulation must embrace any law that would even indirectly, as in the instant case, prohibit any treatment facility; otherwise, a State could accomplish a total ban one facility at a time. Senate Bill 114, they charge, epitomizes the "NIMBY" syndrome: In response to the needs of the nation for treatment of hazardous waste, North Carolina has simply said, "Not in my backyard." By refusing to respond, petitioners urge, the EPA ignores its duty to monitor state programs.

Although, at oral argument, government counsel [\*\*13] attempted to defend the "ban on all treatment" position that petitioners ascribe to the EPA, that is not the basis on which the agency concluded that Senate Bill 114 did not act as a prohibition within the meaning of section 271.4(b). In explaining why the second condition of paragraph (b) had not been met, the Regional Administrator emphasized that of the 485 riparian miles available in North Carolina for a facility of the kind proposed by GSX, 333 remained available under the Act, and noted that a smaller plant could be built at the Laurinburg site. Final Decision at 2. We therefore construe the EPA's decision to mean that a state law "acts as a prohibition" on the treatment of hazardous wastes when it effects a total ban on a particular waste treatment technology within a State, and nothing more.

[\*1396] Such a construction is reasonable and merits deference. The language of paragraph (b), which uses the word "prohibit[]" rather than "impede[]" or "restrict[]" as in the case of paragraph (a), suggests that the former allows States greater latitude in regulating particular treatment facilities before a prohibition is found to exist. This is consistent with the preamble's expression of [\*\*14] a desire to encourage the development of state programs by avoiding the establishment of "very tight standards." See 45 Fed. Reg. at 33,385. Second, defining prohibition in terms of the ban of a particular technology falls well within the language of paragraph (b). Finally, we see nothing inconsistent between this construction and the language of the underlying statute, 42 U.S.C. § 6926(b), which merely asserts that a state program may not be authorized if "such program is not consistent with the Federal and State programs applicable in other States." This language allows the agency enormous latitude in structuring its own implementing regulations and in interpreting them.

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

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

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

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

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

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

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

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

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

#### Prefer it:

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

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

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#### The United States federal judiciary should establish a standard against unilateral exclusion that reduces competition significantly.

#### The courts have broad authority

Hanley, 21 (Daniel A. Hanley, a policy analyst at the Open Markets Institute., 4-6-2021, accessed on 8-10-2021, Slate, "How Antitrust Lost Its Bite", https://slate.com/technology/2021/04/antitrust-hearings-congress-legislation-bright-line-rules.html)//Babcii

History has consistently shown that only bright-line rules will lead to an effective and vigorous enforcement environment, as they do in other areas of law, and prevent the judiciary from favoring dominant economic enterprises and distorting the antitrust laws to preference increased concentration. The Supreme Court’s original development of the rule of reason and its subsequent gutting of the enforcement of the Clayton Act in the 1930s is particularly illustrative of why bright-line rules are necessary. A critical weakness of the Sherman Act when it was passed in 1890 was that it did not incorporate bright-line rules and left the interpretation of the act almost entirely to the judiciary. Despite its broad moral intentions, the first 15 years of its enforcement were anemic against concentrated private power and even [hostile to organized labor](https://escholarship.org/uc/item/8cj0z1tq). Eventually the federal government would obtain its first significant victory [in 1904](https://en.wikipedia.org/wiki/Northern_Securities_Co._v._United_States), but the legal standard that the court would use to determine the legality of antitrust violations was not fully decided until the 1911 Standard Oil case, in which the Supreme Court codified the rule of reason. [Standard Oil v. United States](https://en.wikipedia.org/wiki/Standard_Oil_Co._of_New_Jersey_v._United_States) is widely known for breaking up the company. However, the case was actually a pyrrhic victory for antitrust enforcers. In the case, the court created the foundation for the rule of reason by declaring that only “unreasonable” trade practices (known as restraints of trade) were illegal under the Sherman Act. In other words, the judiciary in Standard Oil anointed itself with unilateral discretionary power to manage and organize the economy and neutered the Sherman Act’s application. Outrage from Congress and the public over the judiciary’s seizure of power resulted in swift action. Less than three years later, Congress would try to reassert its position to ensure a deconcentrated marketplace with the Clayton Act. When Congress enacted the Clayton Act in 1914, its primary goal was to supplement the Sherman Act by bolstering a plaintiff’s ability to arrest certain enumerated conduct in its incipiency—to nip monopolistic behavior in the bud. The Clayton Act explicitly lessened the litigation burden on plaintiffs for certain exclusionary practices, including certain forms of tying (conditioning the purchase of a product on the purchase of another product), price discrimination, and exclusive dealing (contracts or coercive behavior that prevents suppliers or distributors from engaging with a firm’s rivals). Most importantly, Congress included in the Clayton Act a highly deferential and plaintiff-friendly legal standard meant to prohibit mergers (although only limited to acquisitions of assets and not for stock) that only “may be to substantially lessen competition” or “tend to create a monopoly.” The Clayton Act made clear that Congress was trying to arrest certain antitrust violations such as mergers as a means to grow corporate operations, and to reverse the Supreme Court’s declaration in [Standard Oil](https://en.wikipedia.org/wiki/Standard_Oil_Co._of_New_Jersey_v._United_States). However, the Supreme Court would instead successfully hijack this antitrust law too, in order to favor its own prescription for managing the economy.

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#### Reconciliation passes now – the delay gives Biden time to work magic in the wings, but PC and focus are key

Herb et al. 10-1 (Jeremy Herb, CNN Politics Reporter, Kevin Liptak, Reporter, Phil Mattingly, Senior White House Correspondent, Lauren Fox, CNN Congressional Correspondent, Melanie Zanona, Capitol Hill Reporter, “'It doesn't matter when': How Biden gave feuding House Democrats an off-ramp”, CNN Politics, 10-1-21, <https://www.cnn.com/2021/10/01/politics/dems-biden-infrastructure-delay/index.html)//babcii>

(CNN)President Joe Biden didn't [travel to Capitol Hill on Friday](https://www.cnn.com/2021/10/01/politics/house-vote-infrastructure-democrats/index.html) to close the deal, or to rally the troops through a final legislative gantlet. There was nothing cinematic -- or dramatic -- about the trip down Pennsylvania Avenue for the 36-year Senate veteran, who has more than once informed aides of [his unparalleled ability](http://www.cnn.com/2021/09/27/politics/biden-agenda-congress-deal-maker/index.html) to read, speak to and corral lawmakers. Instead, in remarks that lasted less than 30 minutes, Biden served a singular purpose: a presidential pressure relief valve. In a week deemed an "inflection point" by top aides, where the President was rarely seen in public as his entire domestic agenda hung in the balance, it marked a seemingly low bar to clear for success. There would be no miraculous deal to unlock the formula to move forward on the two key components Democrats are attempting to pass. The promised vote on the [$1.2 trillion infrastructure bill](https://www.cnn.com/politics/live-news/congress-infrastructure-bill-vote-10-01-21/index.html) would not materialize. But after days of intraparty warfare and feverish late-night negotiations, a reset was desperately needed -- and the best Biden could offer. In delivering an unscripted and at times unwieldy message that the infrastructure vote wasn't likely to happen -- and the top-line cost of the economic and climate package was going to have to come down -- the President made the bet that he can keep both sides of the intraparty feud on board in the critical days and weeks to follow. **White House and Democratic leaders will now launch an all-out effort to win** over the two Senate Democratic holdouts, Sens. [Joe Manchin of West Virginia](https://www.cnn.com/2021/09/30/politics/joe-manchin-budget-bill-1-5-trillion-schumer/index.html) and [Kyrsten Sinema of Arizona](https://www.cnn.com/2021/09/30/politics/kyrsten-sinema-arizona-reaction/index.html), as they shape what the multitrillion-dollar economic and social package looks like -- and how high its price tag will be. Congressional Democrats and White House officials say progress was made this week getting all sides closer to an agreement on the massive economic, climate and health care spending package that Democratic leaders intend to pair with the bipartisan $1.2 trillion infrastructure bill that's passed the Senate already. But in the House, moderate and progressive Democrats were engaged in a **slow-motion game of chicken** over the infrastructure vote, with moderates demanding a vote on the infrastructure bill this week that had been pledged by House Speaker Nancy Pelosi -- and [progressives standing firm that they would vote it down](https://www.cnn.com/2021/09/30/politics/house-infrastructure-negotiations-vote/index.html) without an agreement on the framework for the larger economic package. On Friday, Biden sought the off-ramp. It marked his most direct effort to date to cajole the House Democratic caucus at a moment when its members have grown increasingly frustrated about the amount of attention the President and his team have paid to their side of the Capitol. Though well received with several ovations, the appearance didn't serve to salve those wounds entirely -- with some saying afterward that his pep talk had actually exacerbated them. But it did deliver a critical message and a consequential moment, multiple members said: Compromise now -- or end up with nothing. It's likely too soon to say whether the debate this week is just a preamble to Democrats' enacting their historic agenda or if it's a feud that leads to legislative defeat, hobbling the President's party ahead of a tough midterm election cycle with little to show for controlling both chambers of Congress and the White House. 'Who knows what label I get' After the roughly half hour meeting with the President, Democrats described a leader who was in his element and not working to change minds as much as remind members of their shared and unified goals as a caucus. Throughout the infrastructure push, Biden has made clear to Democrats that party unity -- or, in some participants' interpretation, loyalty -- is of utmost importance with only the slimmest of majorities in the House and Senate. He tried to break down the stalemate and the tensions that have hung over the party for weeks, reminding them that he's not on one side or the other. At one point, he made a reference to his own political ideology, saying, "Who knows what label I get." To which Pelosi replied: "President," prompting loud laughter from the room. Biden also talked about how he had redone his office to have paintings hung of Lincoln and FDR -- "A deeply divided country and the biggest economic transformation," said Rep. David Cicilline of Rhode Island, "which is kind of the moment we're in." White House officials think the President accomplished what he went to do on Capitol Hill: Remind Democrats of what is at stake while relieving some of the pressure that had built up over the last several days and reiterating his commitment to passing both pieces of legislation. With that done, officials believe, negotiators have a better environment to be able to push toward a deal. "We're going to get this done," Biden told reporters as he left the meeting. "It doesn't matter when. It doesn't, whether it's in six minutes, six days or six weeks -- we're going to get it done." 'As long as we're still alive' Even before Friday, Biden had alluded in recent days to negotiations slipping beyond the week's end. With the stakes simply too high -- on both the political and policy fronts -- there are no plans to walk away. "It may not be by the end of the week," the President had responded when asked Monday how he would define success at the end of this week. "I hope it's by the end of the week." "But as long as we're still alive ...," Biden said before shifting course in his thought.

#### Antitrust reform decks PC and trades off with infra

Carstensen, 21 (Peter C. Carstensen, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, 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.

#### Infrastructure bill is essential for warming - it decarbonizes and invigorates the economy by speeding up construction and the development of green tech

**McDonnell ’21**; [Tim McDonnell; a reporter covering global climate change and energy issues, based in Washington, D.C. He has worked previously for National Public Radio and Mother Jones, and spent a couple years freelancing across sub-Saharan Africa and South Asia for National Geographic, The New York Times, and other outlets. He was a Fulbright-National Geographic Storytelling Fellow and a National Geographic Explorer; 3/23/21; Quartz; “Biden’s infrastructure bill will make or break his climate legacy”; <https://qz.com/1987869/joe-bidens-new-infrastructure-bill-is-all-about-climate-change/>; accessed: 7/12/21; YS]

President Joe **Biden** is turning to his next **legislative priority,** a $3 trillion pair of **infrastructure bills** that put **climate change front and center**. As first reported in the New York Times on March 22, funding will be directed to the **electric grid**, energy-efficient affordable **housing**, electric vehicle charging stations, and other **clean energy priorities**. It follows a $1.9 trillion economic stimulus package signed earlier this month.

The infrastructure package shows that Biden is taking a different approach to the climate crisis than Barack Obama. Rather than centering his climate policy agenda on regulating greenhouse gas emissions from power plants (as Obama did, with his Clean Power Plan), Biden’s priority is to pour money into new **technologies** and **clean energy** hardware with a goal to **decarbonize the US electricity system by 2035**. The administration is betting that leading with a carrot, rather than the stick, will be the **fastest**, lowest-cost way to make a lasting dent in emissions, while breathing life in to the post-pandemic economy (new emissions regulations from the Environmental Protection Agency will likely follow).

“This could be the most **promising opportunity** to make progress on **decarbonization** across the economy that the US has had in a long time,” said John Larsen, director of climate and energy at Rhodium Group, a research firm. “And as far as getting very quick returns on investments, the power sector is the most important place to make progress.”

How **infrastructure spending** can **benefit** the climate

The last time the US saw a big clean energy spending bill was Obama’s $90 billion green stimulus in 2009, which ultimately gave a dramatic boost to solar and wind energy. Biden’s new effort is an order of **magnitude greater**: The Times reports that the package includes “nearly **$1 trillion** in spending on the **construction** of roads, bridges, rail lines, ports, electric vehicle charging stations, and improvements to the **electric grid** and other parts of the **power sector**,” as well as “one million affordable and energy-efficient **housing** units.” The remainder of the **$3 trillion** is set aside for rural **broadband connectivit**y, building and renovating schools, and job retraining for millions of workers.

As for spending on the power sector, Larsen and his colleagues laid out a few guiding principles for the Biden team in a Mar. 23 report. They recommend dramatically increasing and extending the duration of tax credits for renewables, which are currently scheduled to wind down over the next few years; create new incentives to help existing nuclear power plants stay open; and write off old federal loans made to local governments to build coal-fired power plants, so that those can close ahead of schedule.

#### Warming causes extinction.

Bill McKibben 19. Schumann Distinguished Scholar at Middlebury College; fellow of the American Academy of Arts and Sciences; holds honorary degrees from 18 colleges and universities; Foreign Policy named him to their inaugural list of the world’s 100 most important global thinkers. "This Is How Human Extinction Could Play Out." Rolling Stone. 4-9-2019. https://www.rollingstone.com/politics/politics-features/bill-mckibben-falter-climate-change-817310/

Oh, it could get very bad. In 2015, a study in the Journal of Mathematical Biology pointed out that if the world’s oceans kept warming, by 2100 they might become hot enough to “stop oxygen production by phyto-plankton by disrupting the process of photosynthesis.” Given that two-thirds of the Earth’s oxygen comes from phytoplankton, that would “likely result in the mass mortality of animals and humans.” A year later, above the Arctic Circle, in Siberia, a heat wave thawed a reindeer carcass that had been trapped in the permafrost. The exposed body released anthrax into nearby water and soil, infecting two thousand reindeer grazing nearby, and they in turn infected some humans; a twelve-year-old boy died. As it turns out, permafrost is a “very good preserver of microbes and viruses, because it is cold, there is no oxygen, and it is dark” — scientists have managed to revive an eight-million-year-old bacterium they found beneath the surface of a glacier. Researchers believe there are fragments of the Spanish flu virus, smallpox, and bubonic plague buried in Siberia and Alaska. Or consider this: as ice sheets melt, they take weight off land, and that can trigger earthquakes — seismic activity is already increasing in Greenland and Alaska. Meanwhile, the added weight of the new seawater starts to bend the Earth’s crust. “That will give you a massive increase in volcanic activity. It’ll activate faults to create earthquakes, submarine landslides, tsunamis, the whole lot,” explained the director of University College London’s Hazard Centre. Such a landslide happened in Scandinavia about eight thousand years ago, as the last Ice Age retreated and a Kentucky-size section of Norway’s continental shelf gave way, “plummeting down to the abyssal plain and creating a series of titanic waves that roared forth with a vengeance,” wiping all signs of life from coastal Norway to Greenland and “drowning the Wales-sized landmass that once connected Britain to the Netherlands, Denmark, and Germany.” When the waves hit the Shetlands, they were sixty-five feet high. There’s even this: if we keep raising carbon dioxide levels, we may not be able to think straight anymore. At a thousand parts per million (which is within the realm of possibility for 2100), human cognitive ability falls 21 percent. “The largest effects were seen for Crisis Response, Information Usage, and Strategy,” a Harvard study reported, which is too bad, as those skills are what we seem to need most. I could, in other words, do my best to scare you silly. I’m not opposed on principle — changing something as fundamental as the composition of the atmosphere, and hence the heat balance of the planet, is certain to trigger all manner of horror, and we shouldn’t shy away from it. The dramatic uncertainty that lies ahead may be the most frightening development of all; the physical world is going from backdrop to foreground. (It’s like the contrast between politics in the old days, when you could forget about Washington for weeks at a time, and politics in the Trump era, when the president is always jumping out from behind a tree to yell at you.) But let’s try to occupy ourselves with the most likely scenarios, because they are more than disturbing enough. Long before we get to tidal waves or smallpox, long before we choke to death or stop thinking clearly, we will need to concentrate on the most mundane and basic facts: everyone needs to eat every day, and an awful lot of us live near the ocean. FOOD SUPPLY first. We’ve had an amazing run since the end of World War II, with crop yields growing fast enough to keep ahead of a fast-rising population. It’s come at great human cost — displaced peasant farmers fill many of the planet’s vast slums — but in terms of sheer volume, the Green Revolution’s fertilizers, pesticides, and machinery managed to push output sharply upward. That climb, however, now seems to be running into the brute facts of heat and drought. There are studies to demonstrate the dire effects of warming on coffee, cacao, chickpeas, and champagne, but it is cereals that we really need to worry about, given that they supply most of the planet’s calories: corn, wheat, and rice all evolved as crops in the climate of the last ten thousand years, and though plant breeders can change them, there are limits to those changes. You can move a person from Hanoi to Edmonton, and she might decide to open a Vietnamese restaurant. But if you move a rice plant, it will die. A 2017 study in Australia, home to some of the world’s highest-tech farming, found that “wheat productivity has flatlined as a direct result of climate change.” After tripling between 1900 and 1990, wheat yields had stagnated since, as temperatures increased a degree and rainfall declined by nearly a third. “The chance of that just being variable climate without the underlying factor [of climate change] is less than one in a hundred billion,” the researchers said, and it meant that despite all the expensive new technology farmers kept introducing, “they have succeeded only in standing still, not in moving forward.” Assuming the same trends continued, yields would actually start to decline inside of two decades, they reported. In June 2018, researchers found that a two-degree Celsius rise in temperature — which, recall, is what the Paris accords are now aiming for — could cut U.S. corn yields by 18 percent. A four-degree increase — which is where our current trajectory will take us — would cut the crop almost in half. The United States is the world’s largest producer of corn, which in turn is the planet’s most widely grown crop. Corn is vulnerable because even a week of high temperatures at the key moment can keep it from fertilizing. (“You only get one chance to pollinate a quadrillion kernels of corn,” the head of a commodity consulting firm explained.) But even the hardiest crops are susceptible. Sorghum, for instance, which is a staple for half a billion humans, is particularly hardy in dry conditions because it has big, fibrous roots that reach far down into the earth. Even it has limits, though, and they are being reached. Thirty years of data from the American Midwest show that heat waves affect the “vapor pressure deficit,” the difference between the water vapor in the sorghum leaf’s interior and that in the surrounding air. Hotter weather means the sorghum releases more moisture into the atmosphere. Warm the planet’s temperature by two degrees Celsius — which is, again, now the world’s goal — and sorghum yields drop 17 percent. Warm it five degrees Celsius (nine degrees Fahrenheit), and yields drop almost 60 percent. It’s hard to imagine a topic duller than sorghum yields. It’s the precise opposite of clickbait. But people have to eat; in the human game, the single most important question is probably “What’s for dinner?” And when the answer is “Not much,” things deteriorate fast. In 2010 a severe heat wave hit Russia, and it wrecked the grain harvest, which led the Kremlin to ban exports. The global price of wheat spiked, and that helped trigger the Arab Spring — Egypt at the time was the largest wheat importer on the planet. That experience set academics and insurers to work gaming out what the next food shock might look like. In 2017 one team imagined a vigorous El Niño, with the attendant floods and droughts — for a season, in their scenario, corn and soy yields declined by 10 percent, and wheat and rice by 7 percent. The result was chaos: “quadrupled commodity prices, civil unrest, significant negative humanitarian consequences . . . Food riots break out in urban areas across the Middle East, North Africa, and Latin America. The euro weakens and the main European stock markets lose ten percent.” At about the same time, a team of British researchers released a study demonstrating that even if you can grow plenty of food, the transportation system that distributes it runs through just fourteen major choke-points, and those are vulnerable to — you guessed it — massive disruption from climate change. For instance, U.S. rivers and canals carry a third of the world’s corn and soy, and they’ve been frequently shut down or crimped by flooding and drought in recent years. Brazil accounts for 17 percent of the world’s grain exports, but heavy rainfall in 2017 stranded three thousand trucks. “It’s the glide path to a perfect storm,” said one of the report’s authors. Five weeks after that, another report raised an even deeper question. What if you can figure out how to grow plenty of food, and you can figure out how to guarantee its distribution, but the food itself has lost much of its value? The paper, in the journal Environmental Research, said that rising carbon dioxide levels, by speeding plant growth, seem to have reduced the amount of protein in basic staple crops, a finding so startling that, for many years, agronomists had overlooked hints that it was happening. But it seems to be true: when researchers grow grain at the carbon dioxide levels we expect for later this century, they find that minerals such as calcium and iron drop by 8 percent, and protein by about the same amount. In the developing world, where people rely on plants for their protein, that means huge reductions in nutrition: India alone could lose 5 percent of the protein in its total diet, putting 53 million people at new risk for protein deficiency. The loss of zinc, essential for maternal and infant health, could endanger 138 million people around the world. In 2018, rice researchers found “significantly less protein” when they grew eighteen varieties of rice in high–carbon dioxide test plots. “The idea that food became less nutritious was a surprise,” said one researcher. “It’s not intuitive. But I think we should continue to expect surprises. We are completely altering the biophysical conditions that underpin our food system.” And not just ours. People don’t depend on goldenrod, for instance, but bees do. When scientists looked at samples of goldenrod in the Smithsonian that dated back to 1842, they found that the protein content of its pollen had “declined by a third since the industrial revolution — and the change closely tracks with the rise in carbon dioxide.” Bees help crops, obviously, so that’s scary news. But in August 2018, a massive new study found something just as frightening: crop pests were thriving in the new heat. “It gets better and better for them,” said one University of Colorado researcher. Even if we hit the UN target of limiting temperature rise to two degrees Celsius, pests should cut wheat yields by 46 percent, corn by 31 percent, and rice by 19 percent. “Warmer temperatures accelerate the metabolism of insect pests like aphids and corn borers at a predictable rate,” the researchers found. “That makes them hungrier[,] and warmer temperatures also speed up their reproduction.” Even fossilized plants from fifty million years ago make the point: “Plant damage from insects correlated with rising and falling temperatures, reaching a maximum during the warmest periods.”

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#### The United States federal government should increase prohibitions on the private sector without using anti-trust law by establish a purpose-built competition agency comprised of industry and subject matters experts that establish basic rules of conduct, including at least prohibiting unilateral exclusion that reduces competition significantly.

#### CP solves --- establishes a new agency with full authority and acts fast

Lohr, 20 (Steve Lohr, Pulitzer Prize for Explanatory Reporting, a foreign correspondent for a decade, , 10-22-2020, accessed on 5-16-2021, The New York Times, "Forget Antitrust Laws. To Limit Tech, Some Say a New Regulator Is Needed.", <https://www.nytimes.com/2020/10/22/technology/antitrust-laws-tech-new-regulator.html)//Babcii>

But even as the [Justice Department filed an antitrust suit against Google](https://www.nytimes.com/2020/10/20/technology/google-antitrust.html) on Tuesday for unlawfully maintaining a monopoly in search and search advertising, a growing number of legal experts and economists have started questioning whether traditional antitrust is up to the task of addressing the competitive concerns raised by today’s digital behemoths. Further help, they said, is needed.

Antitrust cases typically proceed at the stately pace of the courts, with trials and appeals that can drag on for years. Those delays, the legal experts and economists said, would give Google, Facebook, Amazon and Apple a free hand to become even more entrenched in the markets they dominate.

A more rapid-response approach is required, they said. One solution: a specialist regulator that would focus on the major tech companies. It would establish and enforce a set of basic rules of conduct, which would include not allowing the companies to favor their own services, exclude competitors or acquire emerging rivals and require them to permit competitors access to their platforms and data on reasonable terms.

The British government has already said it would create a digital markets unit, with calls for a Big Tech regulator to also be introduced in the European Union and in Australia. In the United States, recommendations for a digital markets regulator have also been made in expert reports and in congressional testimony. It could be a separate agency or perhaps a digital division inside the Federal Trade Commission.

Significantly, the leading proponents of this path in the United States are mainstream antitrust experts and economists rather than break-’em-up firebrands. Jason Furman, a professor at Harvard University and chair of the Council of Economic Advisers in the Obama administration, led [an advisory group to the British government](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf) that recommended the creation of a digital markets unit in 2019.

Breaking up the big tech companies, Mr. Furman said, is a bad idea because that would risk losing some of the consumer benefits these digital utilities undeniably deliver. A regulator is necessary to police digital markets and the behavior of the tech giants, he said.

“I’m a small ‘c’ conservative, and I’m not a fan of regulation generally,” Mr. Furman said. “But it’s needed in this space.”

Regulators that focus on specific sectors of the economy are common in the United States. For financial markets, there is the Securities and Exchange Commission; for airlines, the Federal Aviation Administration; for pharmaceuticals, the Food and Drug Administration; for telecommunications, the Federal Communications Commission; and so on.

There is also precedent for picking out a handful of big companies for special treatment. In banking, the biggest banks with the most customers and loans are classified as “systemically important financial institutions” and subject to more stringent scrutiny.

Several supporters of a new tech regulator were officials in the Obama administration, which was known for being friendly to Silicon Valley. But the advocates said that experience — as well as the conservative, pro-big business drift of court rulings in recent years — left them [frustrated with antitrust law](https://www.nytimes.com/2018/09/07/technology/monopoly-antitrust-lina-khan-amazon.html) as the only way to restrain the growing market power and conduct of the big tech companies.

“The mechanism of antitrust is not working to protect competition,” said Fiona Scott Morton, an official in the Justice Department’s antitrust division in the Obama administration, who is an economist at the Yale University School of Management. “**So let’s do something else — use a different tool.”**

### OFF

#### Healthcare Antitrust is under the radar but top of the FTC agenda

Levine, 21 - master’s degree from the Columbia University Graduate School of Journalism and a bachelor of arts in English from the University of Pennsylvania. She is also an alumna of the Fellowships at Auschwitz for the Study of Professional Ethics, a program in Germany and Poland that explores the ethics of reporting on politics, war and genocide (Alexandra, “How Biden's tech trustbuster could change health care,” *Politico*, 8-25-2021, <https://www.politico.com/newsletters/future-pulse/2021/08/25/how-bidens-tech-trustbuster-could-change-health-care-797333>)

Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

**Antitrust enforcement saps up FTC resources and personnel, which are finite**

Tara L. **Reinhart, et al. 21**. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing **antitrust litigation is an expensive and laborious process**, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a **handful of antitrust matters** at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the **FTC will still have to pick its cases carefully** and cannot challenge every deal or every instance of alleged unlawful conduct.

#### Intervention in healthcare consolidation is key to innovation

Richman et. al 17 (Barak, Professor of Law, Duke University Law School; \* Elena Vidal, Professor of Strategic Management at University of Toronto, Will Mitchell, Rotman School of Business; Assistant Professor of Management, Baruch, and Kevin Schulman, College/CUNY, Zicklin School of Business; Professor of Medicine, Duke University Medical School. “Pharmaceutical M&A Activity: Effects on Prices, Innovation, and Competition” p. 798-799 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6441&context=faculty_scholarship>]

Perhaps even more important than the potential impact on prices, some observers and theorists suggest that M&A activity in the pharmaceutical sector might reduce innovative activity in the industry. Commentators not only worry that industry consolidation increases prices, but also that it reduces incentives to innovate.34 These commentators express concern that large pharmaceutical firms exhibited diminishing R&D productivity—producing fewer discoveries, generating less valuable discoveries, and creating discoveries that represent more incremental and duplicative innovations.35 In parallel, commentators suggest that the recent merger trend contributed to big pharma’s diminishing innovation, in part because mergers are often followed by layoffs in R&D personnel, changes in management and research priorities, and reductions in total R&D spending.36

#### innovation solves disease, bioterror, and ABR.

Sonja Marjanovic and Carolina Feijao 20. \*Sonja Marjanovic; Director, Healthcare Innovation, Industry and Policy, RAND Europe. \*Carolina Feijao; Ph.D. in biochemistry, University of Cambridge; M.Sc. in quantitive biology, Imperial College London; B.Sc. in biology, University of Lisbon. “Pharmaceutical Innovation for Infectious Disease Management” RAND Corporation. 2020. https://www.rand.org/content/dam/rand/pubs/perspectives/PEA400/PEA407-1/RAND\_PEA407-1.pdf

As key actors in the healthcare innovation landscape, pharmaceutical and life sciences companies have been called on to develop medicines, vaccines and diagnostics for pressing public health challenges. The COVID-19 crisis is one such challenge, but there are many others. For example, MERS, SARS, Ebola, Zika and avian and swine flu are also infectious diseases that represent public health threats. Infectious agents such as anthrax, smallpox and tularemia could present threats in a bioterrorism context. The general threat to public health that is posed by antimicrobial resistance is also well-recognised as an area in need of pharmaceutical innovation. Innovating in response to these challenges does not always align well with pharmaceutical industry commercial models, shareholder expectations and competition within the industry. However, the expertise, networks and infrastructure that industry has within its reach, as well as public expectations and the moral imperative, make pharmaceutical companies and the wider life sciences sector an indispensable partner in the search for solutions that save lives. This perspective argues for the need to establish more sustainable and scalable ways of incentivising pharmaceutical innovation in response to infectious disease threats to public health. It considers both past and current examples of efforts to mobilise pharmaceutical innovation in high commercial risk areas, including in the context of current efforts to respond to the COVID-19 pandemic. In global pandemic crises like COVID-19, the urgency and scale of the crisis – as well as the spotlight placed on pharmaceutical companies – mean that contributing to the search for effective medicines, vaccines or diagnostics is essential for socially responsible companies in the sector. It is therefore unsurprising that we are seeing industry-wide efforts unfold at unprecedented scale and pace. Whereas there is always scope for more activity, industry is currently contributing in a variety of ways. Examples include pharmaceutical companies donating existing compounds to assess their utility in the fight against COVID19; screening existing compound libraries in-house or with partners to see if they can be repurposed; accelerating trials for potentially effective medicine or vaccine candidates; and in some cases rapidly accelerating in-house research and development to discover new treatments or vaccine agents and develop diagnostics tests. Pharmaceutical companies are collaborating with each other in some of these efforts and participating in global R&D partnerships (such as the Innovative Medicines Initiative effort to accelerate the development of potential therapies for COVID-19) and supporting national efforts to expand diagnosis and testing capacity and ensure affordable and ready access to potential solutions. The primary purpose of such innovation is to benefit patients and wider population health. Although there are also reputational benefits from involvement that can be realised across the industry, there are likely to be relatively few companies that are ‘commercial’ winners. Those who might gain substantial revenues will be under pressure not to be seen as profiting from the pandemic. In the United Kingdom for example, GSK has stated that it does not expect to profit from its COVID-19 related activities and that any gains will be invested in supporting research and long-term pandemic preparedness, as well as in developing products that would be affordable in the world’s poorest countries. Similarly, in the United States AbbVie has waived intellectual property rights for an existing combination product that is being tested for therapeutic potential against COVID-19, which would support affordability and allow for a supply of generics. Johnson & Johnson has stated that its potential vaccine – which is expected to begin trials – will be available on a not-for-profit basis during the pandemic. Pharma is mobilising substantial efforts to rise to the COVID-19 challenge at hand. However, we need to consider how pharmaceutical innovation for responding to emerging infectious diseases can best be enabled beyond the current crisis. Many public health threats (including those associated with other infectious diseases, bioterrorism agents and antimicrobial resistance) are urgently in need of pharmaceutical innovation, even if their impacts are not as visible to society as COVID-19 is in the immediate term. The pharmaceutical industry has responded to previous public health emergencies associated with infectious disease in recent times – for example those associated with Ebola and Zika outbreaks. However, it has done so to a lesser scale than for COVID-19 and with contributions from fewer companies. Similarly, levels of activity in response to the threat of antimicrobial resistance are still low. There are important policy questions as to whether – and how – industry could engage with such public health threats to an even greater extent under improved innovation conditions.

### OFF

#### The fifty states and all relevant territories should **expand the scope of their state antitrust laws to prohibit unilateral exclusion that reduces competition significantly.**

#### Solves – no risk of preemption

Waller, 03 (Spencer Weber Waller, Professor and Director of the Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law, “The Incoherence of Punishment in Antitrust”, Chicago-Kent Law Review, April, 2003, https://scholarship.kentlaw.iit.edu/cklawreview/vol78/iss1/8/)//babcii

The remaining governmental enforcer is at the state rather than the federal level. The attorneys general of the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and other United States dependencies and territories each enforce their own state or territorial level antitrust laws. 61 Most of these laws track the substance of the Sherman Act fairly closely, but each state has different exemptions, procedures, and remedies. The Supreme Court is quite clear that the states (and territories) are normally free to grant greater or lesser rights than the federal antitrust laws without preemption being an issue.6 One important difference is that federal antitrust law permits suit for treble damages only for direct purchasers-those who dealt directly with the unlawful price fixers or monopolists-while a substantial number of states permit suits by indirect purchasers under state antitrust law. 63 The states also frequently bring suit under the federal antitrust laws. First, the states purchase an enormous amount of goods and services. Where they are victims of antitrust violations in their capacity as purchasers they are entitled to treble damages like any other private plaintiff.64 Second, the states have been granted parens patriae powers to sue on behalf of any natural persons in their jurisdiction who have been injured by reason of any antitrust violation.65 The states have come under tremendous criticism for their more activist posture. Critics have argued that the states are merely free riders on federal enforcement efforts or, when the states pursue a separate agenda, they are doing so for narrow partisan political reasons unrelated to sound antitrust and competition policy.66 The states understandably disagree. Their ability to sue on their own behalf and on behalf of their citizens is enshrined in federal legislation. Their ability to enact their own state antitrust statutes and empower their officials and private parties to sue under them flows from their sovereign status under the Constitution. The states also dispute the free rider label, pointing to important antitrust litigation where either the states acted before the federal government, or where the federal government took no action at all.67 They point to the efficiency-enhancing aspects of pooling resources and of collective investigation and prosecution of nationwide cases. 68 Finally, the states have long argued that the state attorneys general are more sensitively attuned to the issues affecting the citizens of their states than the federal antitrust agencies could ever be. They can therefore better represent the public interest even at the risk of coming under the sway of interest groups representing competitors of a potential antitrust defendant.

## Case

### 1NC --- Solvency --- F/L

#### Courts circumvent --- They’ve blatantly ignored every congressional attempt to limit monopoly power

Hanley, 21 (Daniel A. Hanley, a policy analyst at the Open Markets Institute., 4-6-2021, accessed on 8-10-2021, Slate, "How Antitrust Lost Its Bite", https://slate.com/technology/2021/04/antitrust-hearings-congress-legislation-bright-line-rules.html)//Babcii

History has consistently shown that only bright-line rules will lead to an effective and vigorous enforcement environment, as they do in other areas of law, and prevent the judiciary from favoring dominant economic enterprises and distorting the antitrust laws to preference increased concentration. The Supreme Court’s original development of the rule of reason and its subsequent gutting of the enforcement of the Clayton Act in the 1930s is particularly illustrative of why bright-line rules are necessary. A critical weakness of the Sherman Act when it was passed in 1890 was that it did not incorporate bright-line rules and left the interpretation of the act almost entirely to the judiciary. Despite its broad moral intentions, the first 15 years of its enforcement were anemic against concentrated private power and even [hostile to organized labor](https://escholarship.org/uc/item/8cj0z1tq). Eventually the federal government would obtain its first significant victory [in 1904](https://en.wikipedia.org/wiki/Northern_Securities_Co._v._United_States), but the legal standard that the court would use to determine the legality of antitrust violations was not fully decided until the 1911 Standard Oil case, in which the Supreme Court codified the rule of reason. [Standard Oil v. United States](https://en.wikipedia.org/wiki/Standard_Oil_Co._of_New_Jersey_v._United_States) is widely known for breaking up the company. However, the case was actually a pyrrhic victory for antitrust enforcers. In the case, the court created the foundation for the rule of reason by declaring that only “unreasonable” trade practices (known as restraints of trade) were illegal under the Sherman Act. In other words, the judiciary in Standard Oil anointed itself with unilateral discretionary power to manage and organize the economy and neutered the Sherman Act’s application. Outrage from Congress and the public over the judiciary’s seizure of power resulted in swift action. Less than three years later, Congress would try to reassert its position to ensure a deconcentrated marketplace with the Clayton Act. When Congress enacted the Clayton Act in 1914, its primary goal was to supplement the Sherman Act by bolstering a plaintiff’s ability to arrest certain enumerated conduct in its incipiency—to nip monopolistic behavior in the bud. The Clayton Act explicitly lessened the litigation burden on plaintiffs for certain exclusionary practices, including certain forms of tying (conditioning the purchase of a product on the purchase of another product), price discrimination, and exclusive dealing (contracts or coercive behavior that prevents suppliers or distributors from engaging with a firm’s rivals). Most importantly, Congress included in the Clayton Act a highly deferential and plaintiff-friendly legal standard meant to prohibit mergers (although only limited to acquisitions of assets and not for stock) that only “may be to substantially lessen competition” or “tend to create a monopoly.” The Clayton Act made clear that Congress was trying to arrest certain antitrust violations such as mergers as a means to grow corporate operations, and to reverse the Supreme Court’s declaration in [Standard Oil](https://en.wikipedia.org/wiki/Standard_Oil_Co._of_New_Jersey_v._United_States). However, the Supreme Court would instead successfully hijack this antitrust law too, in order to favor its own prescription for managing the economy. In a 1930 case known as [International Shoe](https://supreme.justia.com/cases/federal/us/280/291/), the Supreme Court decided to interpret the Clayton Act’s directive on mergers, despite its explicit purpose and statutory language, in an equivalent way to the Sherman Act. The court said the Clayton Act also deemed the indicator of an illegal merger to be whether it “injuriously affect[ed] the public”—yet again, a gutting of Congress’ intentions for a robust antitrust law. After the court’s holding in International Shoe, [almost no merger cases](https://heinonline.org/HOL/LandingPage?handle=hein.journals/antlervi3&div=6&id=&page=) were brought either by the Federal Trade Commission or the Department of Justice between 1930 and 1950. Even though the New Deal during the 1930s invigorated antitrust enforcement for violations of the Sherman Act targeting cartels and monopolies, it still took decades of advocacy for the Clayton Act to be significantly amended in 1950 to undo the Supreme Court’s damage. Even then, however, Congress did not impose a bright-line rule for mergers. And although the 1950 amendments to the Clayton Act did lead to vigorous enforcement, it would last only for another decade until the Supreme Court would, in a series of decisions, invent two doctrines, known as [antitrust injury](https://supreme.justia.com/cases/federal/us/479/104/) and [antitrust standing](https://supreme.justia.com/cases/federal/us/429/477/). These doctrines would again erode significant aspects of antitrust enforcement of both the Sherman Act and Clayton Act to the present day. The implementation of the consumer welfare framework since the 1970s is additional evidence from more than a century of consistent judicial mismanagement and hostility toward Congress’ desire to stop corporate concentration. Simply put, the courts cannot be trusted to adequately enforce antitrust laws without bright-line rules. If Congress is going to amend the antitrust laws to ensure they are effectively administered, rules that ban big mergers and the monopolization of markets, prohibit coercive contracts against small suppliers and distributors, and protect workers from dominant corporations must be imposed. Anything less leaves the door open for the judiciary to continue subverting Congress’ economic agenda, as dictated by the voting public, and instead substitute its own. Without bright-line rules, the current reform efforts will be in vain.

#### Solvency evidence says DOJ and FTC need new remedial options --- Plan can’t topically expand that which means they can’t limit monopoly power

### 1NC --- Innovation --- F/L

#### US innovation and start-ups are beating China now BUT antitrust reform destroys investor confidence and innovation

**Moore, 21** (Steve Moore, a senior economic advisor to Donald Trump and a memberof President Trump’s Economic Recovery Task Force. B.A from university of Illinois and a masters in economics from GMU, May 2021, accessed on 6-7-2021, Committee to unleash prosperity, "The New “Trust Busters” Are A Danger to American Prosperity and Tech Dominance", https://committeetounleashprosperity.com/wp-content/uploads/2021/05/CTUP\_TheNewTrustBusters.pdf)//Babcii

In recent years the Justice Department has tried to block a number of blockbuster deals, especially in the technology sector. The Trump administration challenged the $85 billion AT&T and Time Warner merger and is now looking into the $26 billion merger between two large telecommunications giants: T-Mobile and Sprint. Fortunately, the government lost its case, and we now have an American company with the scale and resources to move the United States into the lead in the global race for 5G. Still, the popular press portrays the take-over artists in almost universally unflattering and monopolistic terms. Targeted companies, their shareholders, and their customers are warned that they are the victims of Wall Street greed. “Eat or be eaten,” is the way one news story described the breakneck pace of M&A activity. Private equity deal makers are described as “on the prowl” and no company large or small is “safe” from the corporate raiders. All that has been missing is the theme music from Jaws That interpretation is precisely backwards. Virtually all of the recent evidence and academic studies confirm that when the M&A sharks start swallowing the minnows, the biggest financial winners are the minnows—and their shareholders. On average, the raiders bid up the share prices by 20 to 30% and in some cases, as in the takeover bid for Dow Jones, more than 50%. A 2019 study by the consulting firm, Towers Perrin, reveals that “M&As from the year 2004 onwards are outperforming the market by 7% in terms of shareholder value.” We’ll see if that outperformance holds up over time. Regardless of that, corporate take-overs, both friendly and hostile, have big but mostly invisible benefits for the efficiency of the financial markets, for shareholders and the economy at large. M&A activity creates a powerful incentive for entrepreneurs to set out a shingle and start a new business. Small business activity is a hallmark of the U.S. economy’s dynamism. The entrepreneurs who launch these enterprises and the angel investors who put capital at risk to finance them often do so with the very intention of someday being bought out at high price by a competitor or a Blackstone Group. M&As also help restructure companies that are ineptly managed. Even the hated corporate raiders can help enrich shareholders by ridding corporations of arrogant, abusive, excessively compensated, and ineffective management. For all the vilification of Michael Milliken, his firm Drexel Burnham easily created more wealth for American shareholders singlehandedly than all the trustbusters in American history combined. One of the biggest corporate raiders in the world today is General Electric, which budgets roughly $500 million a year for corporate acquisitions. Those who are convinced that company CEOs and top management are grossly overpaid relative to the value they provide to shareholders should be the biggest fans of the M&A industry and its chopping block. The economic literature is clear that the biggest gainers from M&A activities are not the acquiring firms, but the owners of the acquired firms. One value of the raiders is that they serve as the ultimate oversight on the financial market beat, searching out and destroying flab and inefficiencies. Virtually every hostile takeover, even those financed with “junk bonds,” made hundreds of millions, if not billions of dollars for stockowners. Some trust busters at the Federal Trade Commission and Justice Department have argued against ever allowing two of three leading competitors in an industry attempt to consolidate, and the Justice Department treats this as a de facto monopolistic endeavor. If the Beatles came along today, the Bush Justice Department would no doubt try to break up Lennon and McCartney for cornering too much of the pop music market. Companies should have the economic freedom to pursue mergers and acquisitions as part of their business strategy and the government should retain the burden of proof in a merger challenge. Given that our country’s antitrust enforcement agencies, the Department of Justice and the Federal Trade Commission, have won nearly 85 percent of the merger challenges they brought over the last 20 years, it seems that the system is already unfairly stacked in the government’s favor.16 Adding restrictions on mergers and acquisitions will only serve to hurt U.S. workers, consumers, and shareholders as well as reduce U.S. competitiveness globally. The popular narrative accompanying these merger reform proposals is that preventing consolidation will help the start-up and small business community. In reality, these proposals will discourage entrepreneurs and innovative U.S. start-ups from entering the market in the first place by blocking the critical exit strategy of being acquired by a larger company. Data shows that most start-ups or small businesses rely on the potential promise of being acquired by a larger company as part of their initial business plan.17 Recent estimates show that approximately 50% of venture-backed companies exit through a merger or acquisition, while only 15% exit through IPOs.18 The presence of trillion dollar companies like Google and Apple with hundreds of billions of dollars for asset acquisitions is one of the greatest spurs to new companies being formed in the history of America. A firm that starts with $2 or $5 million of startup capital lures venture capital and angel investors on the promise that in five years the firm can be sold to a large buyer at ten or twenty times the startup finances. The promise of potential acquisition enables start-ups and small businesses (and the venture capitalists that often fund them) to justify the upfront costs and R&D investments necessary to develop and launch innovative new products and services. And the U.S. start-up and venture capital ecosystem is thriving. In 2019, the United States had the most new “unicorn” companies—venture-backed privately held companies valued at $1 billion or more—in the world, outpacing the closest rival (China) by 56 companies.19 Merger reforms risk discouraging venture capital investment in the U.S. start-up community due to increased risk on potential returns. Reports show that the share of global venture capital invested in the United States has already fallen more than 30% in the last 15 years so new regulatory uncertainty will likely only add to this alarming trend and cause innovative start-ups and venture capital funding to move to other countries with more business-friendly policies.20

#### Tech antitrust crushes the U.S. edge in AI research over China – The link outweighs the consolidation turn. Small firms can’t access the scale or funding necessary to lead AI innovation.

Dakota Foster 20. graduate student at Oxford University and a former visiting researcher at the Center for Security and Emerging Technology, 6/2/20, “Antitrust investigations have deep implications for AI and national security,” <https://www.brookings.edu/techstream/antitrust-investigations-have-deep-implications-for-ai-and-national-security/>

Secretary of Defense Mark Esper has argued that artificial intelligence is likely to shape the future of warfare, and the national-security community has largely backed that conclusion. The most recent National Defense Strategy, released in 2018, highlights AI’s importance, noting that the Pentagon will seek to harness “rapid application[s] of commercial breakthroughs…to gain competitive military advantages.” With defense officials arguing that U.S. military superiority may hinge on artificial intelligence capabilities, antitrust action aimed at America’s largest tech companies—and leading AI innovators—could affect the United States’ technological edge. But the effects of such action are highly uncertain. Will a less concentrated tech sector comprised of slightly smaller firms fuel innovation and create openings for a new generation of tech companies? Or will reductions to scale significantly hurt leading tech firms’ ability to leverage the traditional building blocks of AI innovation—like computing power and data—into breakthroughs? The answers to these questions aren’t clear cut but offer a way to begin thinking about how antitrust enforcement could impact artificial intelligence innovation and national security more broadly. Unlike some earlier national-security technologies, the commercial sector plays an outsize role in AI development. As a result, government access to both AI products and innovation hinges, in large part, on industry. While academia, private research labs, and AI start-ups offer important contributions to AI development, major American technology companies have traditionally led the field. Last year, Microsoft, Facebook, Amazon, Google, and Apple ranked among the ten largest recipients of U.S. artificial intelligence and machine learning (ML) patents. Changes to the composition of America’s tech sector might boost net AI innovation. From 2013-2018, 90 percent of successful Silicon Valley AI start-ups were purchased by leading tech companies. This is a potentially worrisome trend for AI innovation. After all, incumbent firms and emerging companies can have very different incentives. Entrenched tech giants may be more focused on maintaining market share than disrupting markets altogether. As Big Tech increasingly moves to acquire AI start-ups, individual firm dynamics also shift. Instead of “building for scale,” start-ups begin to “build for sale,” adopting a mentality that may be ill-suited for moonshot innovations. Would a company like DeepMind (now owned by Google parent-company Alphabet), for example, have developed AlphaGo—the ground-breaking computer program that became the first to beat a human player in Go—if the firm’s primary goal was to be acquired by a bigger player? Antitrust action could shift these incentives and spur competition, potentially opening the door for new AI innovations—and for a new wave of AI companies. With their smaller statures, some of these firms might focus on more niche AI applications, including defense-related products, as start-ups like Anduril and ShieldAI have done. Today’s tech giants have every financial incentive to cater to foreign markets and the average consumer, not to the U.S. federal government. Indeed, with its global user-base, it is hard to imagine Google tailoring its AI innovation decisions to U.S. defense needs. The same may not hold within an AI ecosystem where some companies built, for example, in the mold of Palantir (a data-analytics company with clear national-security applications) consider government their primary customer and subsequently concentrate on its demands. National-security agencies, from the Pentagon to the U.S. intelligence community, could stand to benefit from more targeted innovation—and from an industrial base better attuned to their needs. As Christian Brose points out, only a fraction of the U.S.’s billion-dollar tech “unicorns” have operated in the defense sector, leaving the U.S. military “shockingly behind the commercial world in many critical technologies.” As Silicon Valley’s largest companies consolidate AI talent and novel ideas through acquisitions, these companies gain an ever-larger say in the future of AI. This consolidation, which antitrust action could disrupt, may not favor innovation. But breaking up major tech firms also has potential pitfalls for AI innovation. With scale comes resources, and AI innovation is resource-intensive, requiring large quantities of data, diverse datastores, and vast computing power—known as “compute” in industry jargon. American tech giants’ huge revenues uniquely equip them to fund costly AI research. Google’s DeepMind, arguably the world’s leading AI-research organization, is billions of dollars in debt and lost over $500 million in 2018 alone. Google’s fortress-like balance sheet can easily absorb the costs associated with such cutting-edge research, but smaller firms likely cannot. The economics of compute offer a concrete example of this dynamic. The rapidly increasing volume of compute required for deep learning research, coupled with compute’s prohibitively expensive prices, creates significant barriers to entry and innovation for smaller AI firms. As Microsoft co-founder Paul Allen noted in 2019, the “exponentially higher” costs of compute may leave the U.S. with only “a handful of places where you can be on the cutting edge.” Even the most well-funded independent AI organizations rely on Big Tech’s compute resources. OpenAI’s billion-dollar compute partnership with Microsoft, reached after OpenAI spent millions renting compute from leading tech firms, offers one example. Changes to firms’ scale also may impact their access to data, another key resource required for AI innovation. Studies have linked the performance of deep learning models to the quantity of data fed into them. At present, tech giants have access to unprecedented volumes of data about their users. Google, for example, can harness data from Google Search, Maps, YouTube, Gmail, and other sources. If antitrust enforcement leads to divestment or broader break-ups, access to data may diminish, lessening innovation. Would reduced access to large, internal datastores hurt U.S. tech companies’ ability to innovate relative to China, whose biggest firms have largely evaded antitrust action? Big Tech executives, including Mark Zuckerberg, have argued that antitrust action could hinder U.S. competitiveness. Data access is a growing point of concern along these lines. The U.S. National Security Commission on AI has reportedly discussed the possibility of data pooling among allied countries to “offset” any data advantage held by China. However, it remains unclear just how central big data will be to the future of AI innovation (promising ML techniques like few-shot learning are not data intensive) and how well big companies can utilize their large datasets in the first place. National security and antitrust are rarely part of the same conversation. The realities of today’s AI ecosystem should challenge that dynamic. American AI innovation is concentrated in the private sector—particularly within its largest, most dominant firms. As these firms face antitrust scrutiny, policymakers and lawmakers alike need to consider the AI ecosystem that they will have a hand in creating. They will need to contemplate its competitiveness, its innovativeness, its responsiveness to defense and national-security needs, and its accessibility to government. Will its companies have the resources to access and acquire key inputs for AI innovation like compute and data? Will the sector’s composition encourage competition at every level? Or will it stifle new growth and engage in anti-innovative practices? American leadership in AI—a key national security technology—may hinge on an AI ecosystem shaped by antitrust action. It will be imperative that innovation considerations play a role in forging it.

#### China won’t win the race

Frey and Osborne, 20 (CARL BENEDIKT FREY is Oxford Martin Citi Fellow and Future of Work Director at the Oxford Martin School at Oxford University and the author of The Technology Trap: Capital, Labor, and Power in the Age of Automation, MICHAEL OSBORNE is Professor of Machine Learning at the University of Oxford, a Fellow at the Oxford Martin School, and Co-Founder of Mind Foundry, “China Won’t Win the Race for AI Dominance”, Foreign Affairs, June 19, 2020, https://www.foreignaffairs.com/articles/united-states/2020-06-19/china-wont-win-race-ai-dominance)//babcii

As scholars who study the applications and implications of artificial intelligence, we respectfully disagree. China, if anything, looks less likely to overtake the United States in artificial intelligence than Japan looked to dominate in computers in the 1980s. For while China is rich in data and has excelled in refining technology invented elsewhere, much impedes it from becoming the site of the next big breakthrough that artificial intelligence sorely needs. DATA ALONE ARE NOT ENOUGH China made international headlines by effectively leveraging its surveillance technology for contact tracing in response to COVID-19, the disease caused by the novel coronavirus. And yet the country’s alleged data advantage is hugely overblown. One reason is that data are highly domain specific and don’t often solve more than the problem for which they were gathered. China’s disregard for privacy enables it to snoop on its citizens, but not much else. And an abundance of surveillance data doesn’t give China an advantage in applying artificial intelligence to such ends as drug discovery or self-driving cars, for example. The puzzle of artificial intelligence lies not in the quantity of data to which its algorithms have access but in the efficiency with which it learns from that data. Even with huge amounts of data, artificial intelligence systems are easily tricked into making errors. The Google researcher Christian Szegedy and his collaborators [proved this point](https://www.nature.com/articles/d41586-019-03013-5) by fooling an algorithm that had once confidently and correctly classified images of dogs and school buses. The researchers manipulated the pixels of images in a manner that would have been completely undetectable to the human eye—but that led the algorithm to classify both dogs and school buses as ostriches. Artificial intelligence algorithms can often identify objects, but they lack any conceptual understanding of the relationships between those objects or of their respective properties. As the deep learning researcher Yoshua Bengio has [warned](https://books.google.com/books?id=65iEDwAAQBAJ&pg=PT62&lpg=PT62&dq=%22We+can%E2%80%99t+realistically+label+everything+in+the+world+and+meticulously+explain+every+last+detail+to+the+computer%22&source=bl&ots=bDk91gna75&sig=ACfU3U0SNS1VFf5a6hmE_2Q-YeFlmWjV_g&hl=en&sa=X&ved=2ahUKEwjpsbTV0PLpAhUNj3IEHUAtAJIQ6AEwAHoECAYQAQ#v=onepage&q=%22We%20can%E2%80%99t%20realistically%20label%20everything%20in%20the%20world%20and%20meticulously%20explain%20every%20last%20detail%20to%20the%20computer%22&f=false), “We can’t realistically label everything in the world and meticulously explain every last detail to the computer.” Artificial intelligence systems are easily tricked into making errors. Many think of China as “the Saudi Arabia of data.” But if data are the new oil, they might just be China’s natural resource curse. For example, in the early twentieth century, electric cars looked more promising than gasoline-powered cars. Huge oil discoveries, among other things, tipped the balance in favor of the internal combustion engine. A century later, we are trying to get back into electric cars. The current focus on data-thirsty AI applications could lead to a similar lock-in into the wrong sort of AI. We have seen this movie before. In the 1980s, the grand promises and overwhelming focus on symbolic AI prompted immense funding and media hype. This meant that funding for “deep learning” dried up. But deep learning has its own problems and has recently caused companies to focus on easy AI problems, such as classifying cats and dogs, where data are abundant. This approach alone is likely to run into diminishing returns that could even prompt another AI winter. Data efficiency is the holy grail of further progress in artificial intelligence. The reason most people associate the steam engine with James Watt and not Thomas Newcomen (who developed a coal-powered steam engine decades earlier) is that Watt’s separate condenser first made the technology energy efficient. Artificial intelligence is still waiting for its separate condenser moment. Indeed, to learn enough to win a game of Go against [Lee Sedol](https://www.nytimes.com/2019/08/01/opinion/peter-thiel-google.html), a champion of the strategic board game, DeepMind’s AlphaGo software first had to play many millions of games against itself. It learned to play far slower than any human. Humans are incredibly data efficient; recent breakthroughs in artificial intelligence are much less so. Whether the United States or China will lead the world in artificial intelligence depends far less on who controls the most data than on who will be the first to innovate past this impasse. EXPERIMENTATION DRIVES INNOVATION Those who warn of China’s inexorable advance in the field of artificial intelligence worry that because the technology is by nature centralizing, authoritarian governments are better able to encourage AI innovation than democratic ones—and that AI technology, in turn, will advantage authoritarian governments. The concern recalls a belief about electricity that held sway a century ago—and like that belief, today’s is also misplaced. In 1923, the pioneering electrical engineer Charles Steinmetz—whose work for the General Electric Company around the turn of the twentieth century made him [a celebrity](https://www.smithsonianmag.com/history/charles-proteus-steinmetz-the-wizard-of-schenectady-51912022/) of the time—[predicted](https://books.google.com/books?id=Ka8eAQAAIAAJ&pg=PA116&lpg=PA116&dq=charles+Steinmetz+electricity+collectivism&source=bl&ots=OWNEd5KOra&sig=ACfU3U32eUBKLQazyEAqq4JcwspEtwis6g&hl=en&sa=X&ved=2ahUKEwjrpazI0IjqAhWBQzABHXgUDXcQ6AEwEnoECAsQAQ#v=onepage&q=charles%20Steinmetz%20electricity%20collectivism&f=false) that electricity would give rise to a more collectivist society. Steinmetz argued, somewhat circularly, that the development of a national electrical grid would lead to socialism, because only a socialist system could effectively manage the new interdependencies that progress toward a national grid would require. The Rural Electrification Act of 1936 did indeed provide funds to rural cooperatives that had been neglected by major private power companies. But the real transition to electrical power came out of capitalist competition, in the form of experimentation on the factory floor. When engineers figured out how to equip every machine with its own electrical motor, rather than relying on one central power source, they could sequence the machines according to the natural flow of production—a breakthrough that gave rise to mass production. Decentralized experimentation and decision-making are critical to harnessing the benefits of AI. Decentralized experimentation and decision-making will likewise be critical if the world is to harness the benefits of artificial intelligence. China is at a disadvantage in this regard. The country’s recent surge in [patent filings](https://www.natlawreview.com/article/china-s-upsurge-patent-filings-continue-post-coronavirus-lockdown) is often cited as evidence of its innovativeness, but simply counting patents isn’t a good way to measure innovation: studies [show](https://link.springer.com/chapter/10.1007/978-1-4757-3750-9_13) that ten percent of patents account for roughly 90 percent of total patent value, meaning that the vast majority are of little value. Patent citations offer a more useful indicator, and if we look at the 100 most cited patents since 2003, not a single one comes from China. Moreover, China’s leading artificial intelligence companies, including Tencent, Alibaba, and Baidu, are merely copies of Facebook, Amazon, and Google, tailored to the Chinese market. As the late economic historian Alexander Gerschenkron observed, when a country lags behind the technological frontier, imitation and the adoption of foreign technology can take it a long way—and, in general, the further a country has fallen behind, the greater the role the state must play in driving industrial catch-up. Thanks to state investment in mass production technology, the Soviet Union grew rapidly during much of the Cold War, as did Japan, South Korea, and Taiwan. Indeed, numerous scholars have attributed the “Asian Miracle” to state-driven industrial catch-up. But while they were successful in closing some of the gap, these countries never managed to overtake the United States. Unlike imitation, which can be planned and coordinated, innovation is a voyage of exploration into the unknown, to paraphrase the economist and philosopher Friedrich von Hayek. And switching from imitation to innovation is hard: if it were easy, most countries would be innovating at the technological frontier. By observing that China is unlikely to overtake the United States in technological innovation, we mean in no way to downplay China’s tremendous economic achievements since Deng Xiaoping came to power in 1978. China has plenty of talent, but the fact remains that, so far, Chinese innovation has mainly focused on incrementally improving technologies that were conceived elsewhere. Chinese companies currently lead the world in the [development of 5G](https://www.wsj.com/articles/in-the-race-to-dominate-5g-china-has-an-edge-11567828888), for example, but their work builds on several previous generations of telecommunications technology. What Huawei demonstrates is that China has significant engineering capabilities, just like Japan and indeed the Soviet Union. DYNAMISM VERSUS STABILITY Artificial intelligence is not yet a mature technology, and continued progress will require radical innovation on multiple fronts. Breakthroughs will happen the way they usually do: through serendipity and recombination, as inventors and entrepreneurs interact and exchange ideas. China’s strong state and collectivist structure have significant advantages in swiftly building infrastructure or mounting a coherent response to a pandemic. But radical innovation is a different matter, and historically, the most innovative societies have always been those that allowed people to pursue controversial ideas. As the eminent economic historian Joel Mokyr has argued, that is why the Industrial Revolution happened in the West rather than in China in the first place. China’s efforts to restrict the flow of ideas on the Internet and elsewhere are likely to hold back innovation. Since [September 2019](http://prod-upp-image-read.ft.com/ec34d7aa-70e6-11ea-95fe-fcd274e920ca), China and Huawei have been proposing [radical changes](https://www.ft.com/content/c78be2cf-a1a1-40b1-8ab7-904d7095e0f2) to the Internet infrastructure that underpins networks worldwide. If implemented, the changes would likely splinter the Internet and further reduce Chinese citizens’ exposure to new ideas from outside the country. The initiative underlines Beijing’s preference for maintaining the political status quo, even if that means slower innovation and less dynamism.

#### We have already lost our military edge to China

Ryan Pickrell, 03-08-2019 – Reporter for Business Insider citing a series of war games conducted by top military experts in the U.S government and the RAND institute. ["The US has been getting 'its ass handed to it' in simulated war games against Russia and China, analysts say," Accessible Online at: https://taskandpurpose.com/russia-china-war-games]

\*Edited for ableist language.

In war games simulating a high-end fight against Russia or China, the U.S. often loses, two experienced military war-gamers have revealed. "In our games, when we fight Russia and China, 'blue' gets its ass handed to it," David Ochmanek, a RAND warfare analyst, explained at the Center for a New American Security on Thursday, Breaking Defense first reported. U.S. forces are typically color-coded blue in these simulations. "We lose a lot of people. We lose a lot of equipment. We usually fail to achieve our objective of preventing aggression by the adversary," he said. U.S. stealth fighters die on the runway At the outset of these conflicts, all five battlefield domains — land, sea, air, space, and cyberspace — are contested, meaning the U.S. could struggle to achieve the superiority it has enjoyed in the past. In these simulated fights, the "red" aggressor force often obliterates U.S. stealth fighters on the runway, sends U.S. warships to the depths, destroys U.S. bases, and takes out critical U.S. military systems "In every case I know of, the F-35 rules the sky when it's in the sky," Robert Work, a former deputy secretary of defense and an experienced war-gamer, said Thursday. "But it gets killed on the ground in large numbers." Neither China nor Russia has developed a fifth-generation fighter as capable as the F-35, but even the best aircraft have to land. That leaves them vulnerable to attack. U.S. warships are wiped off the board "Things that sail on the surface of the sea are going to have a hard time," Ochmanek said. Aircraft carriers, traditional beacons of American military might, are becoming increasingly vulnerable. They may be hard to kill, but they are significantly less difficult to take out of the fight. Naval experts estimate that US aircraft carriers now need to operate at least 1,000 nautical miles from the Chinese mainland to keep out of range of China's anti-ship missiles, according to USNI News. U.S. bases burn "If we went to war in Europe, there would be one Patriot battery moving, and it would go to Ramstein [in Germany]. And that's it," Work explained, according to Breaking Defense. "We have 58 Brigade Combat Teams, but we don't have anything to protect our bases. So what difference does it make?" Simply put, the U.S. military bases scattered across Europe and the Pacific don't have the anti-air and missile-defense capabilities required to handle the overwhelming volume of fire they would face in a high-end conflict. U.S. networks and systems crumble In a conflict against a near-peer threat, U.S. communications satellites, command-and-control systems, and wireless networks would be ~~crippled~~ [destroyed]. "The brain and the nervous system that connects all of these pieces is suppressed, if not shattered," Ochmanek said of this scenario. Work said the Chinese call this type of attack "system destruction warfare." The Chinese would "attack the American battle network at all levels, relentlessly, and they practice it all the time," Work said. "On our side, whenever we have an exercise, when the red force really destroys our command and control, we stop the exercise and say, 'let's restart.'" A sobering assessment "These are the things that the war games show over and over and over, so we need a new American way of war without question," Work stressed. Ochmanek and Work have both seen U.S. war games play out undesirably, and their damning observations reflect the findings of an assessment done from last fall. "If the United States had to fight Russia in a Baltic contingency or China in a war over Taiwan, Americans could face a decisive military defeat," the National Defense Strategy Commission — a bipartisan panel of experts picked by Congress to evaluate the National Defense Strategy — said in a November report. The report called attention to the erosion of the U.S.'s military edge by rival powers, namely Russia and China, which have developed a "suite of advanced capabilities heretofore possessed only by the United States." The commission concluded the U.S. is "at greater risk than at any time in decades."

#### US-China war won’t escalate

Gombert et al 16 – \*Distinguished Visiting Professor for National Security Studies at the United States Naval Academy and former Principal Deputy Director of National Intelligence. He holds a Bachelor of Science degree in Engineering from the U.S. Naval Academy and a Master of Public Affairs degree from the Woodrow Wilson School, Princeton University. \*\*M.A. in China studies from the Johns Hopkins School of Advanced International Studies (SAIS) and a graduate certificate from the Hopkins-Nanjing Center for Chinese and American Studies. [Gompert\*, David C., Astrid Cevallos and Cristina L. Garafola\*\*, RAND, War with China: Thinking Through the Unthinkable, <http://www.rand.org/pubs/research_reports/RR1140.html#download>, accessed 10/14/16, ge/kmc]

We postulate that a war would be regional and conventional. It would be waged mainly by ships on and beneath the sea, by aircraft and missiles of many sorts, and in space (against satellites) and cyberspace (against computer systems). We assume that fighting would start and remain in East Asia, where potential Sino-U.S. flash points and nearly all Chinese forces are located. Each side’s increasingly far-flung disposition of forces and growing ability to track and attack opposing forces could turn much of the Western Pacific into a “war zone,” with grave economic consequences. It is unlikely that nuclear weapons would be used: Even in an intensely violent conventional conflict, neither side would regard its losses as so serious, its prospects so dire, or the stakes so vital that it would run the risk of devastating nuclear retaliation by using nuclear weapons first. We also assume that China would not attack the U.S. homeland, except via cyberspace, given its minimal capability to do so with conventional weapons. In contrast, U.S. nonnuclear attacks against military targets in China could be extensive. The time frame studied is 2015 to 2025. The need to think through war with China is made all the more important by developments in military capabilities. Sensors, weapon guidance, digital networking, and other information technologies used to target opposing forces have advanced to the point where both U.S. and Chinese military forces seriously threaten each other. This creates the means as well as the incentive to strike enemy forces before they strike one’s own. In turn, this creates a bias toward sharp, reciprocal strikes from the outset of a war, yet with neither side able to gain control and both having ample capacity to keep fighting, even as military losses and economic costs mount. A Sino-U.S. conflict is unlikely to involve large land combat. Moreover, the unprecedented ability of U.S. and Chinese forces to target and destroy each other—conventional counterforce—could greatly deplete military capabilities in a matter of months. After that, the sides could replenish and improve their forces in an industrial technological-demographic mobilization contest, the outcome of which depends on too many factors to speculate, except to say that costs would continue to climb. ‘

### 1NC --- Democracy --- F/L

#### Other nations don’t model US democracy

Yogendra Yadav, 11/4/2020 (national president of Swaraj India, “Why the US is a model of how not to be a democracy,” <https://theprint.in/opinion/why-the-us-is-a-model-of-how-not-to-be-a-democracy/536768/>, Retrieved 8/4/2021)

Democrats all over the world wait anxiously for the much-deserved departure of Donald Trump. It could be a long wait and could well extend to another four years. At the time of this article being published, the vote count appears to be leaning towards Trump. Yet, those who care for democracy, must be grateful to Trump for something. He has singlehandedly demolished one of the biggest myths of our time: the myth of the greatness of American democracy, the idea that the US was as an exemplar of democracy, a model for others to emulate. This may be a painful realisation for many. In the last instance, this is good news for Democrats. Now, Trump should not get all the credit for demolishing the American model. He simply ensured that the whole world woke up to some of the most poorly kept secrets of American politics. Above all, he left no room to doubt that, like everywhere else, some of the top leaders in this great democracy were intellectually and morally challenged. That someone like him could bully his way to the White House and, perhaps, retain it for another term reveals something very disturbing about the American public. His mishandling of the coronavirus pandemic blurred the imaginary distinction between the first and the third world. His appointment to the Supreme Court, just before the elections, threw light on what a scandal apex judicial appointments in the US are. His not-so-hidden support for White supremacists in the face of the #BlackLivesMatter movement exposed the underbelly of racial divisions in the US. Finally, the global attention he brought to the presidential election 2020 has served to expose the shoddy electoral system in the US. Clearly, the US could learn a thing or two from India on how to conduct elections and carry out a quick and clean count of votes. In sum: Thanks to Donald Trump, the world learnt that the US is just one of the democracies in the world. It has its strengths and its weaknesses. It needs to learn from other democracies before it preaches the same to the rest of the world. No matter who emerges victor, the process and the outcome of the current election is bound to reinforce this lesson. Not a model I learnt this lesson much earlier, thanks to my friend-cum-co-author-cum-teacher, the late Alfred Stepan. A great scholar of comparative politics, Professor Stepan (and the late Juan J. Linz) could talk about intricacies of authoritarian regimes in South America, the Catalan issue in Spain or the Russian minority in Ukraine with as much ease as he would discuss the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka or the Burmese transition to democracy. He was passionate about India (an M.F. Husain in his drawing room reminded everyone of his India connect) and curious to understand every single detail of Indian politics. (He travelled to Mizoram to understand how the state returned to normalcy after 1987). I learnt a lot from him and Professor Linz while co-writing a book, Crafting State-Nations. VDO.AI Towards the end of his life, Professor Stepan started reflecting on his own country, the United States, by placing it in a comparative perspective. He was no Left-wing critic of American capitalism. He was quintessentially American and passionately liberal-democrat. His conclusion, much before Trump was anywhere on the scene, was unambiguous: if the world is to democratise, the US is not a model to emulate. I was an easy convert to this view, as I have always suspected moral claims from the global North. But I have found this a tough lesson to take across in a world obsessed with the US of A. Trump made my job easier. Today may be the right day to mention four key reasons why the US is not a model for a democracy. The first two are related to institutional design and the other two are about the nature of politics. Flawed systems The first is the famed but deeply flawed “presidential” system of the US. It is well known that the US-style presidential system institutes regular conflict between the legislature and the executive, leading to routine deadlocks. Alfred Stepan theorised it differently: the real problem with the presidential system of government is that it makes power indivisible and coalition making that much more difficult. This comes in the way of the power-sharing so necessary for the accommodation of diversities. Also, the American system leads to several veto points. Stepan demonstrated brilliantly that the greater the number of veto points in a political system, the higher the inequality in that society. He never failed to remind us that among the long-standing democracies, the US was the most unequal country. That is why any attempts to replicate the US-style presidential model, whether in South America or in the ex-USSR countries, has mostly been a disaster. The second element of the US model is its unique federalism. In the US, every power is assumed to be with the state, unless specifically given to the centre. You can see this even in how they conduct national elections. Each state has its own rules of who can vote, under what procedure, when and how. Not just that, each state has its own timetable of when they would count results, whether votes received after today would be accepted and what would be the deadline for completing the count. The states zealously guard these rights in a society that is otherwise increasingly homogeneous. This was held out to a “pure” model of federalism. Stepan reminded us that this was by no means a model, that it was a feature of a certain kind of “coming together” federalisms and need not be replicated by countries where various units were already together before they adopted federalism. The US is a textbook example of what political scientists call “symmetrical” federalism. Every federal unit has exactly the same powers. Every state, tiny or gigantic, has two seats in the US Senate. And the Senate is more powerful than the House of Representatives that reflects the population strengths of various states. Stepan pointed out that accommodation of deep diversities requires special situations to be recognised and given special treatment. Therefore, “asymmetrical” federalism of the kind we have in Canada and India is more suited for living with deep diversities. Here, too, the US is not a good model. Trump adds to the list Trump has added two more reasons to the list of why the US is not a model for democracies. One, Trump’s presidency has exposed how hollow the American two-party system is. Both the major parties are devoid of ideological orientation or organisational depth. Far from providing a choice, the two-party system is a model of choicelessness. Even if Biden were to win this election, he would be a paler copy of Trump, minus the vitriolic. Two, the last four years have proven how fickle, gullible and manipulable the American public opinion is. Alex de Tocqueville had noticed it more than two hundred years ago. Trump proved that the onset of mass media and social media has made it worse. Whether he wins or not, he has shown that you can get away with lies, hatred and bigotry. Worse, he has shown that you can do so in the face of the most powerful media in the world that repeatedly called him out. Clearly, free speech offers little assurance that truth shall prevail. The US is not the first place in the world to offer this sombre lesson. India is among the long list of countries to offer similar lessons. The world awaits a new theory of democracy. Meanwhile, we can begin by celebrating the demolition of the US-led model of democracy. Not just because the dismantling of any hegemon brings vicarious pleasure. But because this realisation sets us on the right path. There is no model of democracy. There is no golden route to the finished product called democracy.

#### Media AND democracy are resilient

Shattuck et al. 18 [John Shattuck---Professor of Practice in Diplomacy, Fletcher School of Law and Diplomacy, Tufts University; Senior Fellow, Carr Center for Human Rights Policy,Harvard Kennedy School; and Visiting Scholar (Spring 2018), Institute of International Studies, University of California Berkeley; Amanda Watson & Matthew McDole---Masters in Public Policy Candidate, Harvard Kennedy School, February 18, 2018, Care Center for Human Rights Policy, Trump’s First Year: How Resilient is Liberal Democracy in the US?, <https://carrcenter.hks.harvard.edu/files/cchr/files/democratic_resilience_2_16_2018_shattuck_final.pdf>, accessed 6/28/18]

Conclusion What lessons can be drawn from the first year of the Trump administration about the potential for resilience of institutions and elements of liberal democracy in the US? Long before the election of Donald Trump, liberal democratic institutions were in trouble and vulnerable to attack. For more than a decade there has been growing democratic discontent and a steady deterioration of public support for the US system of democratic governance.294 Political polarization and differing partisan perceptions of government performance are the main contributors to this trend. The electoral process has been weakened by the influence of unregulated campaign spending and an increase in state-level voting restrictions and legislative gerrymandering. The Congress has been in a prolonged period of polarization and gridlock. The institutions and elements of liberal democracy have come under attack from anti-establishment populist politics. The result has been a weakening of public belief in the ability of the courts, the Congress and the Constitution to be effective in checking and resisting abuses of power by the executive,295 and a “drop in the percentage of people who agree that the US fully or mostly lives up to democratic standards.” 296 President Trump has exacerbated and accelerated the degradation of liberal democratic institutions. By repeatedly lying and manipulating factual reality, he has promoted the view that there is no objective truth. By attacking, denigrating and insulting opponents, he has degraded public discussion of issues and politicized the public perception of institutions that have normally been perceived as nonpartisan guardrails of democracy. The federal courts, the media, law enforcement agencies and the federal civil service have all been attacked by the President as partisan when they have resisted his agenda. The President’s attack on the FBI in connection with its ongoing Russia investigation into potential collusion and obstruction of justice is a case study of how Trump has sought to benefit from politicizing nonpartisan institutions and thereby undermining democratic norms and the rule of law. An academic commentator observes that “polarization by party identity is so powerful at the moment that most voters see the world through thick red and blue lenses.”297 In the case of the FBI, the President’s attacks have been aimed at altering the public’s perception of an agency previously held in high regard as professional and nonpartisan.298 Notwithstanding these presidential attacks, some of the institutions studied in this report have demonstrated varying degrees of potential for resilience. Those that have been most resistant, like civil society, are strong and innately capable of defense, while others, such as the electoral process, have been weakened by partisan manipulation and are unlikely to prove resilient unless reformed. The greatest resilience has been demonstrated by the strongest institutions, civil society and state and local government, and the greatest vulnerability by the weakest, the electoral process and norms of presidential conduct. Several institutions vulnerable to presidential attack, such as the media, have shown significant levels of resistance, while others with inherent institutional strengths, such as the Congress, have exhibited little to none. What makes some liberal democratic institutions strong and others weak? The history of American political culture has shaped a strong and diverse civil society with a tradition of political activism often in opposition to government. Alexis de Tocqueville pointed out two centuries ago that Americans make up for their skepticism about government with their commitment to civic engagement. Political culture in the US has created a system of state and local government which, under constitutional federalism, shares governing responsibility with the federal government and serves to check and balance federal power, sometimes constructively, as over the past year, and sometimes destructively, as during the post-reconstruction period and the civil rights revolution. By the same token, American political culture has created a weak electoral process, plagued by historical anomalies such as the Electoral College, multiple state and local jurisdictions, unregulated campaign funding, legislative gerrymandering and state restrictions on voting. Presidential norms are weak because they are not written into law and are no match for a president who overrides them. The Congress has been badly weakened by political polarization, despite its express constitutional powers. The most surprising resistance to presidential attack during the first year of the Trump presidency has come from four institutions with significant political vulnerabilities that make them ready targets for an anti-democratic president – the media, the federal judiciary, law enforcement and the federal civil service. The mainstream media in the US have the protection of the First Amendment, but little else to defend them in a digital world in which facts and truth are manipulated and undermined, propaganda is everywhere and public support for accurate reporting is difficult to sustain. Nevertheless, the media have stood up to the President’s “fake news” attacks, expanding investigative reporting, boosting subscriptions and even reflecting a slight increase in public trust.

# 2NC

## Courts CP

### 2NC --- AT: PDCP

#### The perm is severance –

#### Resolved means legislative

Lousiana House of Representatives 5 (<http://house.louisiana.gov/house-glossary.htm>)

Resolution A legislative instrument that generally is used for making declarations, stating policies, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution uses the term "resolved". Not subject to a time limit for introduction nor to governor's veto. ( Const. Art. III, §17(B) and House  Rules 8.11 , 13.1 , 6.8 , and 7.4)

#### Courts cannot create “antitrust law” and cannot “increase prohibitions”

Kalbfleisch 61 – Kalbfleisch, District Court judge. [Paul M. Harrod Co. v. A. B. Dick Co., 194 F. Supp. 502 (N.D. Ohio 1961)]//babcii

Defendant asserts that the term ‘antitrust laws,’ as used in the above section and as defined in 15 U.S.C.A. § 12, does not include a judgment or decree entered in connection with an antitrust case filed by the Government. Plaintiff, on the other hand, asserts that ‘the violation of the earlier decree of this court in itself gives rise to an independent cause of action under Section 4 of the Clayton Act.’ 15 U.S.C.A. § 15. Plaintiff's Brief, p. 7. Plaintiff concedes that ‘as far as he has been able to ascertain, this contention raises issues which have never before been decided by any appellate court.’ Plaintiff's Brief, p. 5. In Nashville Milk Co. v. Carnation Co., 1958, 355 U.S. 373, 78 S.Ct. 352, 2 L.Ed.2d 340, the Supreme Court held that the Robinson-Patman Act, 15 U.S.C.A. §§ 13-13b, 21a, was not included among the ‘antitrust laws' defined in Section 1 of the Clayton Act (15 U.S.C.A. § 12) and that ‘the definition contained in § 1 of the Clayton Act is exclusive.’ Id., 355 U.S. at page 376, 78 S.Ct. at page 354. The definition of ‘antitrust laws' in 15 U.S.C.A. § 12, clearly embraces only the statutes described therein. Even without such a definition the term ‘antitrust laws' could not be construed as pertaining to a judgment or decree entered by a court in connection with an antitrust case filed by the Government. Such decrees do not necessarily reflect the prohibitions of the antitrust laws but may, by their terms, seek to dissipate the effects of the past conduct of the parties and, to this end, frequently enjoin performance of acts lawful in themselves. To permit a private party to recover damages for violation of any provision of such a decree is so obviously beyond the scope of the term ‘antitrust laws,’ as used in the statute, as to require no further discussion. Defendant's motion to dismiss that part of the complaint based on alleged violations of the 1948 consent decree in United States v. A.B. Dick Company will be sustained.

#### ‘Prohibitions’ must be legislative enactments

Benjamin Hill 7, Judge on the Georgia Appeals Court, “Rose v. State”, Court of Appeals of Georgia, 1 Ga. App. 596, 601-602, 58 S.E. 20, 22-23, 1907 Ga. App. LEXIS 47, 4/11/1907

The words "otherwise prohibited," relied on by the State, really mean nothing in this statute. When the legislature used the words "prohibited by law," it exhausted the subject, and the addition of the words "high license or [\*\*\*11] otherwise" was "wasteful and ridiculous excess." These general words are sometimes added to specific enumeration in statutes out of abundance of caution, but they usually mean nothing. Certainly such words must be "restricted to the same genus as the things enumerated," and the use of the word "otherwise," following the words "prohibited by law," meant that the "otherwise" prohibition of the sale of liquor was to be a legal prohibition, that is, prohibited by the law of high license, or otherwise prohibited by law. But we do not think this general word means anything in this statute. Whatever it was intended to mean, it could not by any rule of logic give to the failure of the commissioners to grant licenses the force and effect of a positive enactment prohibiting the sale. The word "prohibit" is an active, transitive verb. As defined by the Standard Dictionary, it means "to forbid, especially by authority or legal enactment; interdict; as, to prohibit liquor-selling, or a person from selling liquor." The word "prohibit," [\*\*23] in its legal sense, implies some legislative enactment forbidding something. "The laws of England, from the early Plantagenets, sternly prohibited the [\*\*\*12] conversion of malt into alcohol." "Prohibition," in the United States, specifically means "the forbidding [\*602] by legislative enactment of the manufacture and sale of alcoholic liquors for use as beverage." Giving, therefore, to the word "prohibited" its ordinary signification and its technical meaning, as applied to the particular subject-matter of the sale of spirituous liquors, it must involve some positive act done by authority.

#### Courts cannot ‘expand’ antitrust law

George Bibikos 19, Founder of GA Bibikos LL.C., J.D. from Widener Commonwealth Law School; Supreme Court of Pennsylvania, “Commonwealth of Pennsylvania, Appelle, vs. Chesapeake Energy Corporation et al., Appellants,” <https://paforciviljusticereform.org/wp-content/uploads/2020/11/PCCJR-Chesapeake.pdf>

The court’s decision therefore (a) alters the rights of parties in Pennsylvania accused of engaging in anticompetitive behavior to defend against those claims in federal court, (b) creates new causes of action under the Consumer Protection Law, and (c) creates new remedies for antitrust violations that defendants would not face in federal court. These decisions are inherently legislative in nature. See, e.g., State v. Philip Morris, Inc., Nos. 96122017 and CL211487, 1997 WL 540913, at \*6 (Md. Cir. Ct. May 21, 1997) (“Altering common law rights, creating new causes of action, and providing new remedies for wrongs is generally a legislative function, not a judicial function.”). If these decisions are legislative in nature, then they are outside the purview of the courts and the executive.

Moreover, when the General Assembly prescribes specific statutory duties and remedies, those provisions must be strictly followed, 1 Pa.C.S. § 1504, and the courts cannot “expand coverage to subsume other remedies.” See Nat’l R. R. Passenger Corp. v. Nat’l Ass’n of R.R. Passengers, 414 U.S. 453, 458 (1974) (“A frequently stated principle of statutory construction is that when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.”). If the Consumer Protection Law is designed to protect buyers in consumer transactions and sets forth specific remedies, the courts are unable to expand the statute to subsume antitrust remedies.

#### USFG = all branches

Miller ‘86 [Arthur, Distinguished Visiting Professor of Law – Emory University. Summer 1986. “Congress, the Constitution, and First Use of Nuclear Weapons.” Review of Politics. Vol. 48, No. 3. ]

Three other points merit mention in this discussion of collective decision-making. First, both the formal and the secret constitutions allocate power over foreign relations and defense to the central government, to, that is, the United States of America visualized as a single entity. What, however, is "the" United States? The question has never been definitively answered; and indeed has seldom been asked in judicial opinion or scholarly discourse.42 Asked another way, the question is this: Where does sovereignty lie in the American polity? The formal constitution is supposedly based on popular sovereignty, with ultimate power resting in the people. That, however, is far from accurate. Proof positive that sovereignty lies in the "state" came when General Robert E. Lee surrendered at Appomattox: "the people" of the South were not to be permitted to exercise their "sovereignty." The powers of the national government are supposedly only those delegated to it, either expressly or impliedly. But that is scarcely accurate, as 200 years of constitutional development attest. The Framers of the formal constitution established a governmental system that, as Justice Robert Jackson commented, would ensure that the dispersed powers of the federal government would be integrated into a workable government. "Separateness but interdependence, autonomy but reciprocity" was the constitutional command.43 The meaning is unmistakable: "the" United States is a single metaphysical entity, encompassing state, society, and government in one artificial being. These terms are not synonymous. The state is the fundamental entity; government its apparatus; and society is composed of the individuals and groups governed. Much like the business corporation, the state-"the" United States-is an artificial construct, more a method than a thing. It exists in constitutional theory-in, for example, the state secrets privilege in litigation-even though judges and commentators alike often confuse the term with government and with society. A legal fiction that by itself can do no act, speak no work, and think no thought, the state (like the corporation) has "no anatomical parts to be kicked or consigned to the calaboose; no soul for whose salvation the parson may struggle; no body to be roasted in hell or purged for celestial enjoyment." 44 Despite loose language to the contrary from executive branch lawyers and even the Supreme Court, "the" state or "the" government-or "the" United States-is not to be equated with the executive branch. Nor with any one branch, for that matter; each branch is part of an indivisible whole.

#### And less than “the,” which denotes a holistic function.

Webster’s ND [Merriam Webster’s Online Dictionary, https://www.merriam-webster.com/dictionary/the]

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole

#### Severance is a voter – it makes the 2AC a moving target since they can spike out of negative ground by artificially eliminating portions of their plan – the impact is clash.

### 2NC --- L2NB

#### Card or warrant please – no card says courts are tied to congress and any backlash would happen

**The court’s immune to political response**

**Mazzone ’18** [Jason; August 9; Professor of Law at the University of Illinois at Urbana-Champaign; Chicago-Kent Law Review, “Above Politics: Congress and the Supreme Court in 2017,” <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=4207&context=cklawreview>; RP]

Absent, too, in the modern Congress is any real sense that the Supreme Court can be brought to heel: say, by constitutional amendment, by stripping the Court of funding, by hauling in members of the Court to justify their rulings before congressional investigatory committees, by appointing special counsels to review and report back on what the Court does, by impeaching the Justices (or locking them up), or by simply ignoring or defying judicial rulings. Perhaps the Court does not rule in ways that offend enough members of Congress (or their constituents) for them to invest the energy—and political capital—required to generate these sorts of measures. Perhaps, instead, members of Congress do not consider such measures **appropriate** in our constitutional system. In either case, modesty on the part of Congress is the result, even in an era when a single party controls both the Congress and the White House. The lesson for the Court is that so long as it continues doing—more or less—what is has done in recent years, it has very little to fear from the Congress. Conclusion After President Trump nominated Neil Gorsuch to fill the vacancy on the Supreme Court left by the death of Justice Scalia, fifteen House Republicans sponsored a Resolution that “the House firmly supports the nomination of Neil Gorsuch to the Supreme Court” and “the Senate should hold a swift confirmation of this nomination.”229 The proposed resolution died, without further action, in the Committee on the Judiciary. While Gorsuch was, of course, confirmed, the failure of the Republican-controlled House to pass a simple resolution supporting the nomination is telling. After an election season in which the Supreme Court figured very prominently, aside from the Senate’s confirmation of a new Justice, Congress in 2017 accomplished nothing with respect to the Supreme Court. Various bills and resolutions—some sponsored by Republicans, others by Democrats, and some garnering bipartisan support—targeted statutory and constitutional rulings by the Court and sought also to impose new regulations upon the Court’s activities. Even the most modest of these proposals failed to advance through the legislative process and become law. We like to think that the Supreme Court, guided solely by the rule of law, is above politics. The experience of 2017 suggests that the Court may also be above politics in the quite different sense that its rulings and activities are largely immune to political response and redress.

### 2NC --- S: Authority

#### Courts have broad authority

Popofsky 14 (Mark S. Popofsky – law lecturer at Harvard and prof @ Georgetown teaching classes on anti-trust law – works in private practice for antitrust law and Douglas Hallward-Driemeir – works with him in private practice – argued in front of the supreme court 17 times, specializes in antitrust law summer 2014 “Antitrust and the Roberts Court” Antitrust, Vol. 28, No. 3, Summer 2014. American Bar Association https://www.ropesgray.com/-/media/Files/articles/2014/July/Summer14-PopofskyC.pdf?la=en&hash=3B6CDB12F8F459A9EFCEEB08BC76A4E4C79E5008 accessed: 8-12-21)//bp

ALTHOUGH THE SUPREME COURT’S overall caseload has shrunk under Chief Justice Roberts, 1 the Court’s antitrust docket strikingly has tripled. Since 2005, when Chief Justice Roberts succeeded William Rehnquist, the Court has taken 14 antitrust cases, compared to just five decided by the Rehnquist Court between 1993 and 2003. 2 The Supreme Court’s renewed interest in antitrust law is welcome. Numerous important issues in the antitrust field remain unsettled. The common-law nature of American antitrust law, moreover, benefits from greater Supreme Court guidance. Some view competition law in general, and antitrust law in particular, as chiefly a form of administrative regulation— a field governed by rules and decisions formulated by the antitrust enforcement agencies. 3 Competition law, it is sometimes decried, merely involves predicting the positions regulators will take. The structure of competition law enforcement overseas—typically an agency model with limited judicial review—and the prominence of agency-driven merger enforcement domestically reinforce this perception. But the depiction of U.S. antitrust law as primarily a matter of administrative regulation is fundamentally wrong. The structure of American antitrust enforcement is at its essence a judicial enforcement (or “law enforcement”) model. Private attorneys general bring the vast majority of antitrust cases. 4 Likewise, the Department of Justice must bring suit in federal court in order to vindicate its views of antitrust law. Even the Federal Trade Commission, which can proceed administratively, ultimately is subject to judicial review. Just as in other areas of the law, the federal courts have the last word on the meaning of our antitrust laws. 5 The Court has interpreted the Sherman and Clayton Acts as creating a species of common law, the meaning of which can evolve with changing conditions, which gives the federal courts a critical role in fashioning our competition laws. As Professor Areeda put it, Congress “invest[ed] the federal courts with a jurisdiction to create and develop an ‘antitrust law’ in the manner of the common law courts.”6Tellingly, even in merger control, where the view of antitrust as administrative regulation has the most purchase, federal courts can and do render important decisions that shape the field and determine outcomes. Viewed from this perspective, the Supreme Court’s recent rediscovery of antitrust reaffirms the vital importance of the federal courts in the dynamic process of common-law development that characterizes our antitrust laws. 7 In this piece, we explore three themes emerging from this reengagement: the Roberts Court’s (1) raising the bar to class actions, a development that transcends antitrust; (2) resistance to specialized rules in favor of broad standards, a development that reinforces the importance of evolution of antitrust law in the lower courts; and (3) protection of price competition, which marks the continuation of a longstanding theme.

### 2NC --- Theory

## A1

### 2NC --- Resources L/T

#### Specifically true for Military AI --- Only big tech can produce corporate clouds needed to secure US primacy

Bateman, 19 (Jon Bateman, Jon Bateman is a fellow in the Cyber Policy Initiative of the Technology and International Affairs Program at the Carnegie Endowment for International Peace. JD, Harvard Law SchoolBA, Johns Hopkins University , 10-22-2019, accessed on 5-18-2021, Carnegie Endowment for International Peace, "The Antitrust Threat to National Security", https://carnegieendowment.org/2019/10/22/antitrust-threat-to-national-security-pub-80404)//Babcii

Consider cloud computing. The Defense Department is planning a massive global cloud called JEDI. Unlike corporate clouds, the “war cloud” must support life-or-death missions on austere battlefields despite virtual or physical onslaughts. The Pentagon found only two eligible bidders: Amazon and [Microsoft](https://quotes.wsj.com/MSFT). Three defense secretaries, a federal judge and the Government Accountability Office have upheld this bidding process.

It is no coincidence the two eligible bidders have a combined market value of $1.9 trillion. Vast resources were needed to fund global networks of hardened data centers linked by undersea cables. The U.S. military’s unique demands required companies of unique scale. Yet one JEDI bidder faces a concerted breakup campaign (Amazon), and the other was nearly dissolved in 2001 (Microsoft).

Scale also matters in intelligence collection. The Foreign Intelligence Surveillance Act compels U.S. companies to hand over data on suspected foreign agents. U.S. intelligence analysts increasingly rely on FISA to monitor terrorist communications or warn of cyberattacks. Tech giants have particular FISA value because their sheer popularity attracts users from around the world, including hostile actors. The largest tech companies provide some of the fastest-growing intelligence streams.

Splitting up Big Tech would reduce its intelligence value. First, smaller companies would lose global market share to foreign rivals such as Alibaba or Baidu, which can ignore FISA. Small U.S. sites can’t leverage the “network effect,” a gravitational force that helps large sites stay dominant. Intelligence collected from small sites would also be less useful. They see only narrow slices of online activity, whereas tech giants track users across sprawling internet ecosystems. Dismantling these ecosystems would put greater burden on intelligence agencies to “connect the dots” of potential threats.

#### Anti-trust action on tech companies causes Chinese fill in and destroys US tech dominance

Thompson, 20 (Loren Thompson, Chief Operating Officer of the non-profit Lexington Institute and Chief Executive Officer of Source Associates. Prior to holding my present positions, I was Deputy Director of the Security Studies Program at Georgetown University and taught graduate-level courses in strategy, technology and media affairs at Georgetown. I have also taught at Harvard University's Kennedy School of Government. I hold doctoral and masters degrees in government from Georgetown University and a bachelor of science degree in political science from Northeastern University. , 7-16-2020, accessed on 5-18-2021, Forbes, "Inventing Bogus Antitrust Arguments To Bring Down Big Tech Is Bad For National Security", https://www.forbes.com/sites/lorenthompson/2020/07/16/inventing-bogus-antitrust-arguments-to-bring-down-big-tech-is-bad-for-national-security/?sh=a613da9784b2)//Babcii

The same can be said of all the Big Tech companies. They have to run as fast as they can just to stay where they are. Innovation has been the key to their success, and new market entrants are constantly emerging to challenge that success.

What makes this relevant to national security is that the new entrants increasingly aren’t American, they’re Chinese. The biggest reason U.S. manufacturing has receded since 2000 is the rise of China, and the success of companies like Beijing-based Bytedance—TikTok’s parent—is a signal that China is capable of doing the same thing to U.S. tech companies that it has already done to steel makers and electronics manufacturers.

TikTok was downloaded over 300 million times during the first quarter on 2020, making it the most downloaded app during a single quarter in history. Six of the top ten apps in India, soon to be the world’s most populous country, are Chinese. Indian authorities reversed that trend when they banned Chinese apps after a border skirmish, but America’s Internet-based service providers can expect continuous assaults by Chinese rivals for the foreseeable future.

Beijing is undoubtedly encouraging if not subsidizing such assaults. The contrast between how the Chinese government treats its tech companies and the way Washington treats its own players is hard to miss. Whether we like it or not, companies like Alphabet and Facebook have become the leading purveyors of American ideas and influence to the world. If they are hobbled, Chinese competitors will eagerly take their place.

There is no compelling argument for breaking up or otherwise sanctioning U.S. technology leaders. If you think America’s Big Tech companies have too much power, imagine how it will feel when their successors are run out of the People’s Republic.

### 2NC --- Escape Valve L/T

#### The link turn outweighs the risk of the link

Huddleston 21 (Jennifer Huddleston – American Action Forum Technology and Innovation Policy Director and former Mercatus Center research fellow, February 10, 2021, “Implications of the Competition and Antitrust Law Enforcement Reform Act”, https://www.americanactionforum.org/insight/implications-of-the-competition-and-antitrust-law-enforcement-reform-act/, accessed 8/16/21,)

As the Information Technology & Innovation Foundation’s Joe Kennedy points out, studies have found that “killer acquisitions” do not decrease the level of innovation but in fact may lead to increased innovation. Despite claims of a “kill zone,” the United States continues to see record-breaking venture capital investment in new tech companies and new, successful companies that both get acquired and remain independent. While some innovators may wish to take their companies public or create an industry disruptor, this can be a risky and costly choice. As the Center for Growth and Opportunity’s Will Rinehart describes, “For startups, going public isn’t a sure path to success. Companies typically sign away 4 to 7 percent of their gross proceeds to an investment bank to sell shares of the stock. They also tend to incur an additional $4.2 million in costs to go through the process of getting listed. On top of this, a company will have to fork over another $1 to $2 million for federal compliance every year.” As a result, some innovators may find acquisition a more financially feasible option to their product’s ultimate success than incurring these costs. Increasing regulatory barriers to acquisitions in the tech sector might prevent “killer acquisitions,” but this moniker is misleading at best. In the process of stopping these anti-competitive acquisitions, it would also deter beneficial ones. The result would not be an increase in innovation, but rather limiting a valid exit strategy for startups and in the process limiting innovation by both large and small companies.

### 2NC --- AT: Sitaraman

#### Sitaraman cites Japan in 1980 --- That was because of Japanese culture and Yen prices --- NOT the national champions model

Wakabayashi, 12 (Daisuke Wakabayashi, Daisuke Wakabayashi is a business reporter based in San Francisco, covering technology., 8-15-2012, accessed on 8-25-2021, WSJ, "How Japan Lost Its Electronics Crown", https://www.wsj.com/articles/SB10000872396390444840104577551972061864692)//Babcii

Sony, Sharp and Panasonic combined to lose about $20 billion in the past fiscal year. That is a contrast with the glory days of the late 1970s and early 1980s, when Japan started to dominate the world of consumer electronics. As the Japanese economy surged, the electronics conglomerates ruled the market for memory chips, color TVs, and videocassette recorders, while their research labs gave birth to gadgets that would define an era: the Walkman, CD and DVD players. Now, Japan's device makers are an afterthought to [Apple](http://quotes.wsj.com/AAPL) Inc., [Google](http://quotes.wsj.com/GOOG) Inc. and South Korea's [Samsung Electronics](http://quotes.wsj.com/SSNHZ) Co. Japan's current weakness is rooted in its traditional strength: a fixation with "monozukuri," or the art of making things, focused on hardware advances. From Sony's Walkman cassette player, which changed the way people listened to music, to Apple's iPad, which forged a new category of computing, see some of the biggest trendsetting electronic devices. This concept, a source of national pride, pushed Japan's electronics firms to strive for products that were often the world's thinnest, smallest, or delivered other incremental improvement—while losing sight of factors that really mattered to people such as design and ease of use. In the case of the e-reader, Sony was focused on selling devices, while Amazon was focused on selling books. As a result, the Kindle was more in tune with the raison d'être for purchasing the device: to buy and read books. "Even though the first device definitely pointed the way to the future, it's a market that got away from Sony," said Mr. Gartenberg, research director at Gartner Inc. "Others have far more successfully capitalized." To compound matters, the strong yen has made it more difficult to follow up new innovations with the requisite cost reductions to appeal to the mass market. For cutting-edge products, Japanese firms often rely on domestic production and then sell the goods abroad. The strong yen, near record levels, has narrowed the profit margin of Japanese goods sold abroad—a problem that Korean manufacturers have avoided with the relatively weaker won. The erosion in earnings has also made it difficult to invest in future products and technologies.

### 2NC --- no us-russia war

#### No U.S.-Russian war—they’ll never risk it

Ted Galen Carpenter 18, senior fellow in defense and foreign policy studies at the Cato Institute, 7-28-2018, "Russia Is Not the Soviet Union," National Interest, https://nationalinterest.org/feature/russia-not-soviet-union-27041?page=0%2C1)

The problem with citing such examples is that they applied to a different country: the Soviet Union. Too many Americans act as though there is no meaningful difference between that entity and Russia. Worse still, U.S. leaders have embraced the same kind of uncompromising, hostile policies that Washington pursued to contain Soviet power. It is a major blunder that has increasingly poisoned relations with Moscow since the demise of the Union of Soviet Socialist Republics (USSR) at the end of 1991. One obvious difference between the Soviet Union and Russia is that the Soviet governing elite embraced Marxism-Leninism and its objective of world revolution. Today’s Russia is not a messianic power. Its economic system is a rather mundane variety of corrupt crony capitalism, not rigid state socialism. The political system is a conservative autocracy with aspects of a rigged democracy, not a one-party dictatorship that brooks no dissent whatsoever. Russia is hardly a Western-style democracy, but neither is it a continuation of the Soviet Union’s horrifically brutal totalitarianism. Indeed, the country’s political and social philosophy is quite different from that of its predecessor. For example, the Orthodox Church had no meaningful influence during the Soviet era—something that was unsurprising, given communism’s official policy of atheism. But today, the Orthodox Church has a considerable influence in Putin’s Russia, especially on social issues. The bottom line is that Russia is a conventional, somewhat conservative, power, whereas the Soviet Union was a messianic, totalitarian power. That’s a rather large and significant difference, and U.S. policy needs to reflect that realization. An equally crucial difference is that the Soviet Union was a global power (and, for a time, arguably a superpower) with global ambitions and capabilities to match. It controlled an empire in Eastern Europe and cultivated allies and clients around the world, including in such far-flung places as Cuba, Vietnam, and Angola. The USSR also intensely contested the United States for influence in all of those areas. Conversely, Russia is merely a regional power with very limited extra-regional reach. The Kremlin’s ambitions are focused heavily on the near abroad, aimed at trying to block the eastward creep of the North Atlantic Treaty Organization (NATO) and the U.S.-led intrusion into Russia’s core security zone. The orientation seems far more defensive than offensive. It would be difficult for Russia to execute anything more than a very geographically limited expansionist agenda, even if it has one. The Soviet Union was the world’s number two economic power, second only to the United States. Russia has an economy roughly the size of Canada’s and is no longer ranked even in the global top ten . It also has only three-quarters of the Soviet Union’s territory (much of which is nearly-empty Siberia) and barely half the population of the old USSR. If that were not enough, that population is shrinking and is afflicted with an assortment of public health problems (especially rampant alcoholism). All of these factors should make it evident that Russia is not a credible rival, much less an existential threat, to the United States and its democratic system . Russia's power is a pale shadow of the Soviet Union's. The only undiminished source of clout is the country's sizeable nuclear arsenal. But while nuclear weapons are the ultimate deterrent, they are not very useful for power projection or warfighting, unless the political leadership wants to risk national suicide. And there is no evidence whatsoever that Putin and his oligarch backers are suicidal. Quite the contrary, they seem wedded to accumulating ever greater wealth and perks.

## A2

### 2NC --- DPT wrong

#### Empirics disprove it

Rosato, 2011 (Sebastian, Dept of Political Science at Notre Dame. “On the Democratic Peace” Chapter 15 in The Handbook on the Political Economy of War, 2011 from Edward Elgar Publishing)

Despite imposing these definitional restrictions, proponents of the democratic peace cannot exclude up to five major wars, a figure which, if confirmed, would invalidate the democratic peace by their own admission (Ray 1995, p. 27). The first is the War of 1812 between Britain and the United States. Ray argues that it does not contradict the claim because Britain does not meet his suffrage requirement. Yet this does not make Britain any less democratic than the United States at the time where less than half the adult population was eligible to vote. In fact, as Layne (2001, p. 801) notes, "the United States was not appreciably more democratic than un re formed Britain." This poses a problem for the democratic peace; if the United States was a democracy, and Ray believes it was, then Britain was also a democracy and the War of 1812 was an inter-democratic war. The second case is the American Civil War. Democratic peace theorists believe the United States was a democracy in 1861, but exclude the case on the grounds that it was a civil rather than interstate war (Russett 1993, pp. 16-17). However, a plausible argument can be made that the United States was not a state but a union of states, and lhat this was therefore a war between states rather than within one. Note, for example, that the term "United States" was plural rather than singular at the time and the conflict was known as the "War Between the States."7 This being the case, the Civil War also contradicts the claim. The Spanish-American and Boer wars constitute two further exceptions to the rule. Ray excludes the former because half of the members of Spain's upper house held their positions through hereditary succession or royal appointment. Yet this made Spain little different to Britain, which he classifies as a democracy at the time, thereby leading to the conclusion that the Spanish-American War was a war between democracies. Similarly, it is hard to accept his claim that the Orange Free State was not a democracy during the Boer War because black Africans were not allowed to vote when he is content to classify the United States as a democracy in the second half of the nineteenth century (Ray 1993, pp. 265, 267; Layne 2001. p. 802). In short, defenders of the democratic peace can only rescue their core claim through the selective application of highly restrictive criteria. Perhaps the most important exception is World War I, which, by virtue of the fact that Germany fought against Britain, France, Italy, Belgium and the United States, would count as five instances of war between liberal states in most analyses of the democratic peace.9 As Ido Oren (1995, pp. 178-9) has shown. Germany was widely considered to be a liberal state prior to World War I: "Germany was a member of a select group of the most politically advanced countries, far more advanced than some of the nations that are currently coded as having been 'liberal\* during that period." In fact, Germany was consistently placed toward the top of that group, "either as second only to the United States ... or as positioned below England and above France." Moreover, Doyle\*s assertion that the case ought to be excluded because Germany was liberal domestically, but not in foreign affairs, does not stand up to scrutiny. As Layne (1994, p. 42) points out, foreign policy was "insulated from parliamentary control" in both France and Britain, two purportedly liberal states (see also Mearsheimer 1990, p. 51, fn. 77; Layne 2001, pp. 803 807). Thus it is difficult to classify Germany as non-liberal and World War I constitutes an important exception to the finding.

### 2NC --- Nuc accidents

#### Nuclear accidents are fake news

Michael Quinlan, former top official in the British Ministry of Defence, 2009 “Thinking about Nuclear Weapons: Principles, Problems, Prospects” p. 63-69

Deterrence is not possible without escalation risk; and its presence can point to no automatic policy conclusion save for those who espouse outright pacifism and accept its consequences. Accident and Miscalculation Ensuring the safety and security of nuclear weapons plainly needs to be taken most seriously. Detailed information is understandably not published, but such direct evidence as there is suggests that it always has been so taken in every possessor state, with the inevitable occasional failures to follow strict procedures dealt with rigorously. Critics have nevertheless from time to time argued that the possibility of accident involving nuclear weapons is so substantial that it must weigh heavily in the entire evaluation of whether war-prevention structures entailing their existence should be tolerated at all. Two sorts of scenario are usually in question. The first is that of a single grave event involving an unintended nuclear explosion—a technical disaster at a storage site, for example, Dr the accidental or unauthorized launch of a delivery system with a live nuclear warhead. The second is that of some event—perhaps such an explosion or launch, or some other mishap such as malfunction or misinterpretation of radar signals or computer systems—initiating a sequence of response and counter-response that culminated in a nuclear exchange which no one had truly intended. No event that is physically possible can be said to be of absolutely zero probability (just as at an opposite extreme it is absurd to claim, as has been heard from distinguished figures, that nuclear-weapon use can be guaranteed to happen within some finite future span despite not having happened for over sixty years). But human affairs cannot be managed to the standard of either zero or total probability. We have to assess levels between those theoretical limits and weigh their reality and implications against other factors, in security planning as in everyday life. There have certainly been, across the decades since 1945, many known accidents involving nuclear weapons, from transporters skidding off roads to bomber aircraft crashing with or accidentally dropping the weapons they carried (in past days when such carriage was a frequent feature of readiness arrangements----it no longer is). A few of these accidents may have released into the nearby environment highly toxic material. None however has entailed a nuclear detonation. Some commentators suggest that this reflects bizarrely good fortune amid such massive activity and deployment over so many years. A more rational deduction from the facts of this long experience would however be that the probability of any accident triggering a nuclear explosion is extremely low. It might be further noted that the mechanisms needed to set off such an explosion are technically demanding, and that in a large number of ways the past sixty years have seen extensive improvements in safety arrangements for both the design and the handling of weapons. It is undoubtedly possible to see respects in which, after the cold war, some of the factors bearing upon risk may be new or more adverse; but some are now plainly less so. The years which the world has come through entirely without accidental or unauthorized detonation have included early decades in which knowledge was sketchier, precautions were less developed, and weapon designs were less ultra-safe than they later became, as well as substantial periods in which weapon numbers were larger, deployments more widespread and diverse, movements more frequent, and several aspects of doctrine and readiness arrangements more tense. Similar considerations apply to the hypothesis of nuclear war being mistakenly triggered by false alarm. Critics again point to the fact, as it is understood, of numerous occasions when initial steps in alert sequences for US nuclear forces were embarked upon, or at least called for, by, indicators mistaken or misconstrued. In none of these instances, it is accepted, did matters get at all near to nuclear launch--extraordinary good fortune again, critics have suggested. But the rival and more logical inference from hundreds of events stretching over sixty years of experience presents itself once more: that the probability of initial misinterpretation leading far towards mistaken launch is remote. Precisely because any nuclear-weapon possessor recognizes the vast gravity of any launch, release sequences have many steps, and human decision is repeatedly interposed as well as capping the sequences. To convey that because a first step was prompted the world somehow came close to accidental nuclear war is wild hyperbole, rather like asserting, when a tennis champion has lost his opening service game, that he was nearly beaten in straight sets. History anyway scarcely offers any ready example of major war started by accident even before the nuclear revolution imposed an order-of-magnitude increase in caution. It was occasionally conjectured that nuclear war might be triggered by the real but accidental or unauthorized launch of a strategic nuclear-weapon delivery system in the direction of a potential adversary. No such launch is known to have occurred in over sixty years. The probability of it is therefore very low. But even if it did happen, the further hypothesis of it initiating a general nuclear exchange is far-fetched. It fails to consider the real situation of decision-makers as pages 63-4 have brought out. The notion that cosmic holocaust might be mistakenly precipitated in this way belongs to science fiction.

# 1NR R1

## 1NR --- Infra

### 2NC --- O/V

#### outweighs nuke war

McDonald, 19 writer and geography PhD student at University of Oxford studying the intersection of grassroots movements and energy transition. (Samuel Miller, 1-4-2019, “Deathly Salvation”, *The Trouble*, https://www.the-trouble.com/content/2019/1/4/deathly-salvation)

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less ~~suicidal~~ civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

#### Turns every impact.

Torres, 16 (Phil Torres; author, Affiliate Scholar @ Institute for Ethics and Emerging Technologies, founder of the X-Risks Institute, published articles for Bulletin of the Atomic Scientists, Salon, Journal of Future Studies, and the Journal of Evolution and Technology; 7-22-2016, "Op-ed: Climate Change Is the Most Urgent Existential Risk," FLI - Future of Life Institute, http://futureoflife.org/2016/07/22/climate-change-is-the-most-urgent-existential-risk/, accessed 8-9-2016)

For example, according to the Intergovernmental Panel on Climate Change, the effects of climate change will be “severe,” “pervasive,” and “irreversible.” Or, as [a 2016 study](http://www.climate.unibe.ch/~stocker/papers/clark16natcc.pdf) published in Nature and authored by over twenty scientists puts it, the consequences of climate change “will extend longer than the entire history of human civilization thus far.” Furthermore, [a recent article](http://advances.sciencemag.org/content/1/5/e1400253.full?con=&dom=pscau&src=syndication) in Science Advances confirms that humanity has already escorted the biosphere into the sixth mass extinction event in life’s 3.8 billion year history on Earth. Yet [another study](http://www.nature.com/nature/journal/v486/n7401/full/nature11018.html) suggests that we could be approaching a sudden, irreversible, catastrophic collapse of the global ecosystem. If this were to occur, it could result in “widespread social unrest, economic instability and loss of human life.” Given the potential for environmental degradation to elevate the likelihood of nuclear wars, nuclear terrorism, engineered pandemics, a superintelligence takeover, and perhaps even an [impact winter](https://en.wikipedia.org/wiki/Impact_winter), it ought to take precedence over all other risk concerns — at least in the near-term. Let’s make sure we get our priorities straight.

#### Warming collapses democracy

Linker, 19 (Damon Linker is a senior correspondent at TheWeek.com. He is also a former contributing editor at The New Republic and the author of The Theocons and The Religious Test, “Will climate change destroy democracy?”, The Week, May 7, 2019, https://theweek.com/articles/839648/climate-change-destroy-democracy)//babcii

Like nearly everyone who hears such conclusions, from do-nothing skeptics on the denialist right to sky-is-falling alarmists on the environmental left, I lack the knowledge or expertise required to assess their accuracy. But let’s assume that the UN study is trustworthy and its quasi-apocalyptic predictions are sound. For the sake of argument, let’s go further and assume that all the recent major reports warning of existential environmental threats due to climate change are accurate: Major world cities inhabited by hundreds of millions of people will soon be under water. Storms will dramatically increase in severity. So will droughts, floods, and famines, spreading suffering across the globe and provoking refugee flows on a scale never seen or contemplated in human history. What kind of politics are we likely to see in such a world? It’s hard to know for sure, but it’s unlikely to be either liberal or democratic. There’s an oddly apolitical character to most of our talk about environmental threats. Environmental activists, climate scientists, and their journalistic popularizers blast the bad news as [loudly and hyperbolically](https://theweek.com/articles/824408/dangerous-addiction-political-hyperbole) as possible, hoping to wake people up to the multitude of dangers confronting us on every side. Meanwhile, policy intellectuals propose myriad ideas for mitigating this or that part of the problem while largely ignoring the challenge of how to get any one of them, let alone all of them, enacted. Neither camp spends much time reflecting on the capacity of our liberal-democratic political systems to respond effectively to the circumstances that confront and await us. One reason why such reflection has been lacking is that it reveals a reality even bleaker than the one sketched in all those studies of the environmental side of the equation. None of the greatest political philosophers in Western history — from Plato and Aristotle on down through Machiavelli, Hobbes, Locke, Rousseau, and Hume — would be surprised by the lack of resolve on the part of the nations of the world to address global environmental threats. Arguably the problem of politics is getting individuals and groups in a given political community to put aside their own self-interest in favor of the common good. All will benefit in the end, but getting there requires sacrifice. How much sacrifice is just for each? And how can each be persuaded not to free-ride on the sacrifices of others? This was recognized as a problem in the ancient Greek city states, it’s a bigger problem in the much larger and more pluralistic nation states of the modern world, and it's an exponentially greater problem among the “community of nations” in the contemporary world as a whole. It was in part reflection on this problem that inspired Plato to reject democracy as a form of government and instead propose the rule of philosopher-kings — wise leaders who would deliberate and act with the common good in mind at all times. That, for Plato, would be the only way to solve the problem of politics. Whenever environmentally minded activists and pundits express panic and dismay at the inability of the nations of the world to change course to avert disaster, they tacitly acknowledge that Plato had a point: if only they — the environmentally responsible who place the good of the planet above other, narrower considerations — were given overriding political power, the world, and human civilization, might have a chance. That's one way in which the wisdom of liberal-democratic government is being called into question today. As climate change and the collapse of biodiversity accelerates, leading to human suffering and destabilization, the case for keeping political power in the hands of populations that refused to address the problem when it could have made a difference (and that still succumb to bickering when attempting to fashion a response) is likely to decline, creating a hunger for extra-democratic leadership to address the consequences with wisdom and resolution. But let's consider another, seemingly happier possibility: a near-term future in which the nations of the world somehow come to their collective senses and embrace a combination of radical changes in energy production and consumption, agriculture and food production, and population size and growth. As a result, greenhouse-gas emissions, pollution, and other forms of environmental strain begin to recede, allowing the planet and its human inhabitants to reverse course, recover, and avert the worst doomsday scenarios. That sounds delightful — at least until we realize that these changes could only be achieved by the implementation of significant cuts to economic growth. To slow or halt climate change, we need to get smaller — producing fewer offspring, expending less energy, emitting less pollution, consuming fewer resources. This presents its own significant political problem. From the start, modern politics — from classical liberalism on through to more progressive forms of political action like modern liberalism and socialism — have presumed the presence of economic growth and expanding prosperity over time. The promise of material betterment over the course of individual lives and from one generation to the next fuels individual and collective ambition and hope that, in turn, powers the economy. Optimism, hope for the future, faith in progress over time — they are indispensable to keeping our politics decent and broadly democratic. By contrast, when economic pessimism rises, hope for the future wanes, and faith in progress dies out, politics becomes darker, with anger, blame, and bitterness taking the place of contentment. Add in the possibility of economic contraction being paired with the consequences of unavoidable environmental degradation, including refugee flows testing the openness and generosity of the world’s wealthier nations, and we're left with a perfect storm of variables all pointing in the direction of less liberal and less democratic forms of politics. The Brexit vote, the rise of Donald Trump to the American presidency on an anti-immigration platform, the surge of populist parties across Europe in the wake of a spike in refugees from the Middle East — all of it gives us a taste of the political ugliness that may await us. In a world forced to break its addiction to economic growth and the extravagant hopes wrapped up with it, **democracy itself may soon need to be added to the list of endangered species.**

#### The bill solves democratic leadership

**Bergmann , 21** (Max Bergmann , Max Bergmann is a senior fellow at the Center for American Progress. Carolyn Kenney is a senior policy analyst for National Security and International Policy at the Center., 6-30-2021, accessed on 8-27-2021, Center for American Progress, "Climate Will Test Whether America Is Truly ‘Back’ - Center for American Progress", https://www.americanprogress.org/issues/security/news/2021/06/30/501175/climate-will-test-whether-america-truly-back/)//Babcii

In the end, President Biden’s efforts to restore U.S. leadership on the global stage will ultimately be determined by what actions the United States takes domestically on climate, rather than by what is expressed in an international communique. While U.S. officials are confident they can meet short-term climate targets through executive branch regulation, the world does not trust such an approach after witnessing during the Trump administration how easy it is for these to be undone. Therefore, for America to truly be back globally, it needs to first pass robust climate legislation that commits the United States to taking climate action. The Europeans and the rest of the world are thus paying close attention to the climate provisions in the infrastructure bill. The outcome of this bill and whether it includes the climate provisions—to bolster electric vehicles, modernize the energy grid, and protect and restore nature-based infrastructure—will determine whether America can reclaim the mantle of global leadership. The passage of such a transformative package would suddenly make the United States a leader on climate. It would allow the United States to work with Europe in creating the decarbonized economy of the future. It would also enable the United States to press China for more action, not only diplomatically but also in the arena of global public opinion. For too long the United States has been a climate pariah, allowing China to position itself as a responsible and productive actor when it comes to the issue. Strong U.S. action would suddenly turn the tables and allow the United States to ramp up global pressure on China, which is now the world’s largest emitter, producing more carbon than all developed countries combined. For this to happen, however, the climate provisions President Biden outlined in his initial infrastructure proposal need to make it through the legislative process. Whether they are included in the ultimate infrastructure and budget package that makes it through Congress will be critical not only for saving the planet but for preserving American global leadership.

#### The bill solves AI competition

Jennifer **Rubin 12/29** Opinion columnist covering politics and policy, foreign and domestic 12/29/20 “Biden sounds like he has made a choice on China” https://www.washingtonpost.com/opinions/2020/12/29/biden-sounds-like-he-has-made-choice-china/

In short, “America First” is precisely the wrong strategy to deploy when facing international challengers. The current administration, as Biden puts it, created an “enormous vacuum” by receding from the world stage and believing that the president could win over adversaries with his peculiar brand of personal diplomacy, which vacillated between fawning and frenetic bombast. Biden offers a clear-eyed view of our big-power adversaries. However, when coupled with rational analysis as to how we maximize our leverage, he might just succeed where the Trump administration failed. Wright made another sage observation: “Biden should use competition with China as a bridge to Senate Republicans.” Since many Republicans claim to be tough on China, he should seek their buy-in and define the contours of what a tough-on-China policy looks like. Biden’s approach, Wright suggested, should include enlisting Republicans to support when it comes to “pending legislation on investments in the semiconductor industry and 5G infrastructure, appointing assistant secretaries for Asia at the State Department and the Pentagon who can easily win bipartisan support, and showing that he is serious about using the Treasury and Commerce Departments to compete with China.” A robust response to China, Biden can explain to Republicans, includes some items already on his domestic agenda items: “targeted infrastructure investments, including clean technology; an industrial policy to compete with China on 5G, quantum computing, and artificial intelligence; a limited and strategic decoupling from China in certain areas; and bolstering the resilience of the U.S. economy to external shocks, which would include making supply chains more secure,” as Wright says. This approach to China may be a point of bipartisan agreement, despite Republicans’ campaign [rhetoric]~~hysteria~~ that Biden is somehow weak on China. If Biden and his team can find domestic investments that serve to improve our international position in relation to China, even right-wing Republicans might be hard-pressed to stiff him. The Biden administration’s first opportunity to sketch out his approach to China will come when his national security nominees appear for their Senate confirmation hearings. They would do well to use that setting to educate the Senate and the country as to their boss’s “reformist” outlook on big-power competition.

#### 7. Warming destroys US military capabilities

Walt 18 (Stephen M. - Robert and Renée Belfer professor of international relations at Harvard University, 11-28-2018, "Global Warming Is Setting Fire to American Leadership", *Foreign Policy*, https://foreignpolicy.com/2018/12/03/global-warming-will-set-fire-to-american-leadership/)

Second, as noted above, climate change will impose significant costs on the U.S. economy. According to the recent National Climate Assessment, the costs associated with climate change could reduce U.S. GDP by as much as 10 percent by the end of the century. (That’s roughly twice the impact of the 2008 recession, by the way.) The United States will still be a relatively wealthy country, of course, but not as rich as it would be otherwise. Third, adapting to climate change won’t be cheap either. Low-lying areas are going to need dikes, seawalls, storm sewers, and other major infrastructure investments. Some densely populated areas may have to be abandoned, which means the need for new housing for tens of thousands of people (if not more). Power grids will have to be strengthened or replaced, while bridges and causeways will need to be elevated. No one knows precisely what all this will cost, but consider that the climate change adaptation plan proposed by then-New York City Mayor Michael Bloomberg after Hurricane Sandy hit in 2013 was budgeted at $20 billion. It probably wasn’t ambitious enough, the true costs would probably be higher, and that’s just one city (albeit a big and important one). To be sure, some of this new infrastructure would need to be built anyway, even if the planet wasn’t getting warmer and sea levels weren’t rising. And spending on infrastructure can boost productivity and provide lots of lower-to-middle-class employment. Even so, the full cost of adapting to the environment of the late 21st century easily runs into hundreds of billions of dollars over the next few decades. So we are facing a potential double whammy: Climate change will reduce economic growth in various ways, even as we need to spend a lot of money trying to adapt to its effects. This problem might not be too serious if the United States had a big sovereign wealth fund, or if the government were running recurring budget surpluses that could be used to pay for these costs. But the opposite is true: It has a ballooning budget deficit and level of public debt, and recurring political gridlock has turned the budget process into an annual exercise in political posturing and brinkmanship. My point, in short, is that the costs of adapting to climate change are going to put enormous pressure on an already squeezed federal budget, and at a time when the U.S. population is getting older, health care costs are rising, and tax cuts have become the norm. My question, therefore, is simple: Where’s the money going to come from? If this scenario is even partially true, then maintaining a defense budget and a national security establishment that dwarfs those of all other states is going to be increasingly difficult if not politically impossible. Persuading the American people to fund wars of choice, to protect distant allies of questionable strategic value, or even to wage far-flung counterterrorism operations is going to be a hard sell. The foreign-policy “Blob” may continue to resist a strategy of restraint, but fiscal realities may gradually impose one on it anyway.

### 2AC --- 1

#### Top level ---

#### Bills will pass now – PC, focus, and time are all key in negotiations

Desjardins et al. 10-1 (Lisa Desjardins, Correspondent @ PBS NewsHour, Amna Nawaz, chief correspondent @ pbs, and Judy Woodruff, PBS NewsHour, 10-1-2021, accessed on 10-2-2021, PBS NewsHour, "Biden shrugs off infrastructure vote delay, is confident about passing both major bills", https://www.pbs.org/newshour/show/biden-shrugs-off-infrastructure-vote-delay-is-confident-about-passing-both-major-bills)//babcii

Lisa Desjardins: But the fate of the larger so-called reconciliation bill also hinges on moderate Senate Democrats Kyrsten Sinema and Joe Manchin. Both say it must be smaller than what progressives want. Amidst it all, some House Democrats said they wanted more from Biden. Rep. Dean Phillips (D-MN): **The time is now**. He has that singular power to unify them. Question: So, he could be doing more at this point? Rep. Dean Phillips: I think he could be doing more in front of us, yes. Rep. Steve Cohen (D-TN): Very few of us have seen the president in the nine months he's been president. Lisa Desjardins: The White House has said **Biden is engaging and had been making calls** to Democrats **around the clock**. He scrapped a planned event in Chicago to focus on finding an agreement this week on the Hill. Judy Woodruff: And Lisa is here with me now in the studio, along with Amna Nawaz covering the White House today. So, hello to both of you. Lisa, looks like a lot of action, but no clear movement toward any vote. Where does everything stand? Lisa Desjardins: I do not think there will be an infrastructure vote tonight. There will be a vote on something else, though. In that infrastructure bill was the reauthorization for the Highway Trust Fund. That ran out last night at midnight, so Democrats have to deal with that. We expect a 30-day extension of that. There's no real problems from a day lag in that or a few days' lag in that. They will take action. But, overall, Democrats now are doing something that one member said is redoing the conversation from scratch. I want to talk about this issue about Pelosi's promise to have that infrastructure vote today. She said that yesterday. Let's figure out what happened there. I want to explain this to people. For you and I, Judy, a day is 24 hours. That seems very normal, right? But, however, there is a legislative day. And, here, Pelosi is talking about something that can go on indefinitely. We are still in the legislative day of September 30 in the House of Representatives. A legislative day can go on forever. In fact, one time, the late Senator Robert Byrd had one go on for over 100 calendar days, so a little bit of a Jedi mind trick there, I think, that Pelosi is pulling. We will see if she actually ends this legislative day and says, we need more time. When you talk to members, it is clear that the president's visit tonight was a huge morale boost and, moreover, it provided clarity that they needed that he's still on board both of these bills moving at the same time, not one in front of the other. That was important clarity that members didn't have. Judy Woodruff: And speaking of the president, Amna, we were hearing some Democratic members expressing frustration there that the president hasn't been as visible on this. What is your understanding of just how involved he is right now? Amna Nawaz: When you ask the White House, where has the president been, they said, well, he's been very involved. The White House has been involved all along. They point again and again to a team of senior advisers and senior staff who they say have been in close contact with every group and every faction of the Democratic Caucus. Here's the group that they point to. We have seen them before. They're leading the charge on Capitol Hill. Susan Rice, of course, leads the Domestic Policy Council. Ron Klain is the chief of staff, Brian Deese, who heads the Economic Council, Louisa Terrell, who heads legislative affairs, and Steve Ricchetti, of course, who's a senior counselor to the president. The White House says, look, many of them were on the Hill until midnight last night. Since September 1, there have been over 300 calls and meetings with members and staff directors. They say, we have been making the case, we have been there, we have been involved. But, today, they say — and Press Secretary Jen Psaki was asked about this in the briefing — today was the day President Biden felt was the day to go make the case directly to those members, reassure them, we will get there, compromises will be reached, they have to be made, both sides have to give a little. No direct timeline. But he wants to reassure them they're moving forward, he's committed. Judy Woodruff: Well, one of the thing that's become clear is that it's not going to be a $3.5 trillion social spending bill, whatever the name of it is, reconciliation. It's going to be a number lower than that. What are you hearing from the White House about what they are willing to live with? Amna Nawaz: So, of course, we are pressing again and again, trying to get a number from them. What are you comfortable with? What do you think the president would sign off on? The two names we heard more than any other names in the briefing today, senators Manchin and Sinema. They know they have to get some kind of guidance from them and, at the same time, reassure progressives that big agenda is going to move forward. Judy Woodruff: And, Lisa, finally, back to you. Where does it go from here, if you don't expect a vote tonight? And what does this mean for the Democrats? I mean, this was their chance to put their stamp on what's going to happen in this country. Lisa Desjardins: It's even more clear today, Judy, that this is really the beginning, the earnest beginning of negotiations. And at this beginning point, where the conversation is behind closed doors, I have sources — and Yamiche has reported this before too — the conversation seems to be around $2 trillion to $2.5 trillion. Even some progressive said that maybe they can accept something in that area. Of course, there's a big conversation about, then, what is it that gets cut? That's what they're going to have to do soon. But I think, for the next week, it is going to be about what size that both sides can perhaps get their hands around, probably not a firm number, but somewhere in that $2 to $2.5 trillion is what we're talking about right now. I also will say it seems like this has been a chaotic week for Democrats. Speaker Pelosi pledged a vote. That vote didn't happen. That's not good for speaker. But I want to remind people that the Affordable Care Act took over eight months to get through Congress. And, on that vote, the Affordable Care Act in the House, Democrats lost 39 of their members, and they still passed it. Here, Speaker Pelosi can only lose three. That's why this is so much harder. And the Affordable Care Act was also difficult. So this is really threading the tiniest of legislative needles. But I think — I have to say I was convinced by both **progressives and moderates today that they are talking more in unison**, they're **moving towards similar goals**. Once they get down to the details, it's going to get hard again. Judy Woodruff: But, of course, they have known all along how tight this margin is.

#### Biden is focused on infra now – he’s making his case and flexing his leverage

Seidenstein, 10-2 (Bob Seidenstein, 10-2-2021, accessed on 10-1-2021, Adirondackdailyenterprise, "Biden vows to ‘get it done’ as talks drag on $3.5T plan | News, Sports, Jobs - Adirondack Daily Enterprise", <https://www.adirondackdailyenterprise.com/news/politics/2021/10/biden-vows-to-get-it-done-as-talks-drag-on-3-5t-plan/)//Babcii>

Biden huddled with House Democrats in a private meeting that was part instructional, part **morale booster** for the tattered caucus of lawmakers, telling them he wanted both bills passed regardless of the time it takes. He discussed a compromise topline of $1.9 trillion to $2.3 trillion, according to a person in the room, granted anonymity to discuss the talks. “It doesn’t matter whether it’s six minutes, six days or six weeks — **we’re going to get it done**,” Biden told reporters as he left the basement meeting at the Capitol. Action has ground to a halt in Congress despite Speaker Nancy Pelosi’s insistence there would be a “vote today” on a $1 trillion infrastructure bill that is popular but has become snared in the debate over Biden’s broader measure. Voting on Friday appeared increasingly unlikely, throwing the president’s big domestic agenda into doubt as negotiations dragged. Holdout Democratic Sen. Joe Manchin of West Virginia had sunk hopes for a swift compromise, despite hours of shuttle diplomacy late Thursday with White House aides on Capitol Hill, when he refused to budge on his demands for a smaller overall package, around $1.5 trillion. That’s too meager for progressive lawmakers who are refusing to vote on the public works measure without a commitment to Biden’s broader framework on the bigger bill. Talks swirled over a compromise in the $2 trillion range. But with Manchin dug in, a quick deal seemed increasingly out of reach for the present. Still, Biden’s visit was welcomed by Democrats who have complained about not hearing enough from the president about a path forward. “It’s his time to stand up,” said Rep. Dean Phillips of Minnesota. Because of the ongoing negotiations, Biden opted to remain in Washington on Friday instead of traveling to his Delaware home as he often does on weekends. His public approval rating has dropped, according to a new poll from The Associated Press-NORC Center. The White House said the president also plans to travel next week to other cities to **make his case** that his historic measures would help the American people. The president and his party are facing a potentially embarrassing setback — and perhaps a politically devastating collapse of the whole enterprise — if they cannot resolve the standoff. Biden’s bigger proposal is a years-in-the-making collection of Democratic priorities, a sweeping rewrite of the nation’s tax and spending policies that would essentially raise taxes on corporations and the wealthy and plow that money back into government health care, education and other programs, touching the lives of countless Americans. Biden says the ultimate price tag is zero, because the tax revenue would cover the spending costs — higher rates on businesses earning more than $5 million a year, and individuals earning more than $400,000 a year, or $450,000 for couples. “We understand that we’re going to have to get everybody on board in order to be able to close this deal,” said Rep. Pramila Jayapal, D-Wash., the leader of the Congressional Progressive Caucus. “We’re waiting for that.” Frustrated and with their trust frayed, centrist Democrats watched the promised vote slip on the first piece of Biden’s proposal, the slimmer $1 trillion public works bill, a roads-and-bridges package, as progressives **flexed their leverage**. During a private caucus meeting earlier Friday, Pelosi asked lawmakers to stand if they supported the infrastructure package, and most did, according to those in the room. But Pelosi has few **votes to spare** and appeared inclined not to risk failure. Instead, the House and Senate were poised to swiftly approve a 30-day extension of surface transportation programs that are expiring with the fiscal yearend, halting furloughing of more than 3,500 federal transportation workers. That also creates **a new deadline to act** on the stalled $1 trillion infrastructure bill. The White House and Democratic leaders are **intently focused on Manchin and** to some extent Sen. Kyrsten **Sinema** of Arizona, two centrist Democrats who helped steer the public works bill to Senate passage but have concerns that Biden’s overall bill is too big. The two senators have infuriated colleagues with their close-to-the vest negotiations that could tank Biden’s effort — and their own campaign promises. **“I’m willing to sit down and work** on the $1.5,” Manchin told reporters Thursday, as protesters seeking a bigger package and Biden’s priorities chanted behind him outside the Capitol.

#### Negotiations will get progressives AND centrists on board --- BUT Biden needs focus and PC

Mascaro, 10/1 (Lisa Mascaro, 10-1-2021, accessed on 10-1-2021, FOX13 News Seattle Washington KCPQ, "Biden vows to 'get it done' as $3.5T infrastructure bill negotiations drag on", https://www.q13fox.com/news/infrastructure-bill-in-limbo-as-democrats-debate-3-5t-spending-plan)//Babcii

Biden huddled with House Democrats on their home ground in a private meeting that was part instructional, part morale booster for the tattered caucus of lawmakers, telling them he wanted both bills passed regardless of the time it takes. He discussed a compromise topline of $1.9 trillion to more than $2 trillion for his bigger vision, according to lawmakers in the room. But it was clear they are all now in it for the long haul as the White House and its allies in Congress **prepared for protracted negotiations**. "It doesn’t matter whether it’s six minutes, six days or six weeks — we’re going to get it done," Biden declared to reporters as he left his late-afternoon meeting at the Capitol. It's **a pivotal time for both president and party**, as Biden's approval ratings have dropped and Democrats are restless, eager to deliver on his signature campaign promise of rebuilding the country. His ideas go beyond roads-and-bridges infrastructure to delivering dental, vision and hearing care for seniors, free pre-kindergarten for youngsters, major efforts to tackle climate change and other investments that would touch countless American lives. Biden's sudden excursion to Capitol Hill was aimed at giving the legislation a needed boost toward the finish line. Holdout Democratic [Sen. Joe Manchin of West Virginia](https://apnews.com/hub/joe-manchin) had sunk hopes for a swift compromise on a framework when he refused to budge late Thursday on his demands for a smaller overall package, around $1.5 trillion, despite hours of shuttle diplomacy with White House aides. Without a broader deal, prospects for a Friday vote on the companion public works bill stalled out, progressives refusing to lend their votes until senators reach agreement. Speaker Nancy Pelosi said in a late-evening letter to colleagues that "more time is needed" as they shape the broader package. Instead the House passed a 30-day stopgap measure to keep transportation programs running during the stalemate, **essentially setting a new deadline for talks**, Oct. 31. The Senate was set to follow with a vote Saturday, to halt the furloughs of more than 3,500 federal transportation workers, a byproduct of the political impasse. With Republicans solidly opposed to Biden's sweeping vision, the president and his party are reaching for giant legislative accomplishment on their own — all to be paid for by [rewriting federal balance sheets](https://apnews.com/article/technology-joe-biden-business-personal-taxes-137e00b41f113f85cc241438c780785b) with tax hikes on corporations and the wealthy, those earning more than $400,000 a year. As action ground to a halt Friday in Congress, Biden appeared to offer no particular new legislative strategy. Keeping her promise to centrists, Pelosi had insisted there would be a "vote today" on the $1 trillion infrastructure bill that is popular but is snared in the debate over Biden's broader measure. With Democratic progressives refusing to give their support for that slimmer roads-and-bridges bill unless advances are made on the president's big bill, Pelosi with an oh-so-slim House majority was unwilling to call for a vote. Biden, by insisting that both bills pass, gave a nod to the **progressives'** strategy, **while floating the lower numbers acknowledged** the **compromise with centrists to come**.

#### Biden PC and trimming the bill get them on board now

Mascaro and Miller, 21 (Lisa Mascaro and Zeke Miller, 9-30-2021, accessed on 10-2-2021, WJXT News4JAX, "Biden can't budge fellow Dems with big overhaul at stake", <https://www.news4jax.com/news/politics/2021/09/29/sign-of-progress-biden-digs-in-to-strike-deal-on-35t-plan/>)//Babcii

With Biden and his party stretching to achieve what would be a signature policy achievement, **there is a strong sense that progress is being made on the big bill**, said an administration official who requested anonymity to discuss the private talks.

The president is highly **engaged**, meeting separately **with Manchin and Sinema** at the White House this week and talking by phone with lawmakers shaping the package. He even showed up at Wednesday evening's annual congressional baseball game, a gesture of goodwill during the rare bipartisan event among lawmakers.

To reach accord, Democrats are poised to trim the huge Biden measure’s tax proposals and spending goals to reach an overall size **Manchin and Sinema** are demanding

“I think it’s pretty clear we’re in the middle of a negotiation and that everybody’s going to have to **give a little**," said White House press secretary Jen Psaki.

Psaki said **members of Congress “are not wallflowers”** but have a range of views. "We listen, we engage, we negotiate. But ultimately, there are strong viewpoints and what we’re working to do is get to **an agreement.”**

#### An UPRSING of progressive dems will get them to compromise

Gagneux, 10-2 (Aillard Gagneux, 10-2-2021, accessed on 10-2-2021, Cosmosonic.com, "« Faisons-le » : Biden promet de sortir de l'impasse après les pourparlers du Capitole | Joe Biden", <https://www.cosmosonic.com/faisons-le-biden-promet-de-sortir-de-limpasse-apres-les-pourparlers-du-capitole-joe-biden/)//Babcii>  
\*Card was originally in French then google translated --- It messed up the pronouns of Jayapal so I fixed it

Grouped together in an hour-long caucus meeting, Pelosi attempted to steer warring factions within her party towards common ground after Thursday's marathon negotiating session generated deepening acrimony and quagmire. 'there was no agreement.

Congresswoman Pramila Jayapal, chair of the Congressional Progressive Caucus, came out of the morning meeting optimistic that Democrats would eventually pass both bills. But she remained firm in his position, and confident of her members, that the infrastructure bill would not move forward without guarantees that the Senate would pass Biden's biggest bill.

“**We have seen more progress in the last 48 hours than we have seen in a long time in reconciliation**,” she said, attributing **the uprising of progressives** infrastructure to **forcing Manchin and Sinema to the negotiating table**.

The decision to postpone the vote on infrastructure was **seen as a victory** for progressives who were firm in their resolve to “hold the line” and vote against the bill unless they get “firm commitments”. ”On the social and environmental package of 3.5 billion dollars. proposed by Biden would also be approved.

#### Sinema and other moderates will fall in line

Levitz 10-1 (Eric Levitz, New York Magazine's Intelligencer, “Manchin Might Not Be Biden’s Biggest Problem”, New York Magazine, 10-1-21, https://nymag.com/intelligencer/2021/10/manchin-sinema-demands-biden-build-back-better-deal.html)//babcii

The big question is whether other moderates will march to Manchin’s drum. From the beginning, a key threat to Biden’s agenda has been divisions within his own party’s right wing. Some moderates, like Manchin, are more averse to increasing the deficit than raising taxes on the rich; [others evince the opposite preference](https://nymag.com/intelligencer/2021/03/biden-infrastructure-salt-cap-reconciliation.html). If Sinema, Josh Gottheimer, and other tax-allergic moderates get on board with all of Manchin’s revenue raisers, it will be possible to enact a large portion of Biden’s program without increasing the deficit. As of earlier this week, however, Sinema was reportedly opposed to both new progressive tax increases and allowing Medicare to force down drug prices. If Manchin were just posturing about the deficit, then it would be possible to satisfy the pro-plutocracy Democrats’ demands while still enacting a large spending bill. Manchin’s apparent sincerity about the national debt forecloses that option.

Ultimately, though, if the Democratic leadership manages to broker an agreement that Joe Manchin and Bernie Sanders can both support, I doubt that Kyrsten Sinema would feel comfortable single-handedly killing it. And once a bill makes it out of the Senate, the bulk of the House’s moderate holdouts are likely to fall in line. After all, if the senator from the state Trump won by 40 points can support the bill, what excuse would they have?

#### They have plenty of time --- we won’t run out till mid-November

**Scholtes and Emma, 21** (Jennifer Scholtes and Caitlin Emma, 9-15-2021, accessed on 9-17-2021, POLITICO, "Dems’ fiscal endgame could require punting on debt limit", https://www.politico.com/news/2021/09/15/democrats-debt-limit-decoupling-republicans-511836)//Babcii

Treasury Secretary Janet Yellen has warned of “irreparable damage to the U.S. economy” as soon as next month, especially if Congress waits until the last minute to deal with the debt limit. Other experts have estimated that lawmakers may **have until mid-November** to act.

That small window of extra time could fuel arguments in favor of funding the government now, while tackling a higher-stakes debt cliff later — although a bipartisan solution is far from guaranteed.

“I don’t believe we’ll be running out of money on Oct. 1,” said Shelby, the top Republican on the Senate’s spending panel. “It’s going to be a long fall, probably, and a cold, cold winter.”

#### Biden thinks repubs will blink – he isn’t losing sweat, PC, or focus on it

Cadelago, 21 (Christopher Cadelago, White House Correspondent @ politico, 9-23-2021, accessed on 10-2-2021, POLITICO, "Why Biden isn’t hitting the panic button on the debt ceiling — yet", https://www.politico.com/news/2021/09/23/biden-debt-ceiling-513791)//babcii

As the nation barrels toward fiscal catastrophe, President Joe Biden is intent, for now, to keep his powder dry.

Senate Republicans are rebuffing an effort by Democrats to lift the nation’s debt ceiling through a government funding bill that would require 60 votes. And they’re doing so while relying on the unusual argument that while members of the GOP wholeheartedly want to see the debt limit raised or suspended, they just don’t want to be the ones to do it.

That’s left Biden with few options: Plow forward with the plan and risk default, find an alternate route to raise the debt limit through reconciliation, or convince Republicans — either through badgering or enticing them — to get on board with Democrats.

So far, he’s settled on another approach: show no signs of panic.

Biden has largely deferred to Democratic leaders to drive the process on Capitol Hill, while the White House and administration officials avoid talk of fallback options and ramp up the pressure on Republicans to fold.

The administration is working behind the scenes to arrange phone calls between Treasury Department officials and recalcitrant Republicans, appealing to powerful business groups to issue stern warnings of their own and collaborating with progressives to amplify their messaging around the debt limit and implications for the broader economic recovery. They are also coordinating letters and statements from conservative-leaning organizations as well as state and local elected leaders and former government officials.

Biden himself has remained mostly mum on the matter, even though he played a central role in debt ceiling negotiations as vice president, working for a boss — Barack Obama — who eventually pledged never to negotiate over the debt ceiling again.

Instead, the face of the effort to get the debt limit raised or suspended has been Treasury Secretary Janet Yellen, who warned that the country will hit its breaking point next month and be unable to pay its bills. On Wednesday, six former Treasury secretaries wrote to Congress urging action on the issue in the face of “serious economic and national security harm.” Yellen has made several similar appeals in letters beginning in July, a recent Wall Street Journal op-ed and remarks and conversations with Republicans and Wall Street tycoons.

### 2AC --- 2

#### 2. It outweighs other risks by a trillion times.

Ng ’19 [Yew-Kwang; May 2019; Professor of Economics at Nanyang Technology University, Fellow of the Academy of Social Sciences in Australia and Member of the Advisory Board at the Global Priorities Institute at Oxford University, Ph.D. in Economics from Sydney University; Global Policy, “Keynote: Global Extinction and Animal Welfare: Two Priorities for Effective Altruism,” vol. 10, no. 2, p. 258-266]

Catastrophic climate change

Though by no means certain, CCC causing global extinction is possible due to interrelated factors of non‐linearity, cascading effects, positive feedbacks, multiplicative factors, critical thresholds and tipping points (e.g. Barnosky and Hadly, [2016](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0005); Belaia et al., [2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0008); Buldyrev et al., [2010](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0016); Grainger, [2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0027); Hansen and Sato, [2012](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0029); IPCC [2014](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0031); Kareiva and Carranza, [2018](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0033); Osmond and Klausmeier, [2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0056); Rothman, [2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0066); Schuur et al., [2015](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0069); Sims and Finnoff, [2016](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0072); Van Aalst, [2006](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0079)).[7](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-note-1009_67)

A possibly imminent tipping point could be in the form of ‘an abrupt ice sheet collapse [that] could cause a rapid sea level rise’ (Baum et al., [2011](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0006), p. 399). There are many avenues for positive feedback in global warming, including:

* the replacement of an ice sea by a liquid ocean surface from melting reduces the reflection and increases the absorption of sunlight, leading to faster warming;
* the drying of forests from warming increases forest fires and the release of more carbon; and
* higher ocean temperatures may lead to the release of methane trapped under the ocean floor, producing runaway global warming.

Though there are also avenues for negative feedback, the scientific consensus is for an overall net positive feedback (Roe and Baker, [2007](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0065)). Thus, the Global Challenges Foundation ([2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0026), p. 25) concludes, ‘The world is currently completely unprepared to envisage, and even less deal with, the consequences of CCC’.

The threat of sea‐level rising from global warming is well known, but there are also other likely and more imminent threats to the survivability of mankind and other living things. For example, Sherwood and Huber ([2010](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0071)) emphasize the adaptability limit to climate change due to heat stress from high environmental wet‐bulb temperature. They show that ‘even modest global warming could … expose large fractions of the [world] population to unprecedented heat stress’ p. 9552 and that with substantial global warming, ‘the area of land rendered uninhabitable by heat stress would dwarf that affected by rising sea level’ p. 9555, making extinction much more likely and the relatively moderate damages estimated by most integrated assessment models unreliably low.

While imminent extinction is very unlikely and may not come for a long time even under business as usual, the main point is that we cannot rule it out. Annan and Hargreaves ([2011](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0004), pp. 434–435) may be right that there is ‘an upper 95 per cent probability limit for S [temperature increase] … to lie close to 4°C, and certainly well below 6°C’. However, probabilities of 5 per cent, 0.5 per cent, 0.05 per cent or even 0.005 per cent of excessive warming and the resulting extinction probabilities cannot be ruled out and are unacceptable. Even if there is only a 1 per cent probability that there is a time bomb in the airplane, you probably want to change your flight. Extinction of the whole world is more important to avoid by literally a trillion times.

# 2NR

#### Deuhren is inconclusive and says they are doubling down (JCCC Yellow)

Deuhren et al. 10-1 (Andrew Duehren, Kristina Peterson and Lindsay Wise, 10/1/21, *Biden Says Democrats Should Delay Infrastructure Vote Until Deal Reached*, accessed 10/2/21, <https://www.wsj.com/articles/democrats-try-again-to-pass-infrastructure-bill-11633097276>, RAW)

President Biden called on House Democrats to hold off on voting on a roughly $1 trillion infrastructure bill until after they reach an agreement on [a separate social-policy and climate bill](https://www.wsj.com/articles/democrats-budget-plan-what-11626301275?mod=article_inline), moving to again delay final passage of a central piece of his own agenda in a bid to unify restive Democrats. Even as Mr. Biden endorsed progressives’ push to hold up a vote on the infrastructure bill, however, he acknowledged in a closed-door meeting with House Democrats on Friday that the price tag of the social-policy and climate bill would need to drop substantially below $3.5 trillion to closer to roughly $2 trillion, according to lawmakers and aides. The infrastructure bill “ain’t going to happen until we reach an agreement on the next piece of legislation,” Mr. Biden told House Democrats, according to a person familiar with his remarks. Exiting the meeting, Mr. Biden told reporters: “It doesn’t matter whether it’s in six minutes, six days or six weeks. **We’re going to get it done.”**

### 2NC --- AT: warming gets zapped

#### Manchin is flexible on size and will maintain climate provisions

Levitz 10-1 (Eric Levitz, New York Magazine's Intelligencer, “Manchin Might Not Be Biden’s Biggest Problem”, New York Magazine, 10-1-21, https://nymag.com/intelligencer/2021/10/manchin-sinema-demands-biden-build-back-better-deal.html)//babcii

Of course, Manchin does say in the document, as he has previously stated in public, that he doesn’t want the overall package to cost more than $1.5 trillion and would like any excess revenue generated by his preferred tax increases to go toward deficit reduction. Critically, however, the document doesn’t characterize Manchin’s demands as a best and final offer. Rather, it merely says that “Senator Manchin does not guarantee [my emphasis] that he will vote for the final reconciliation legislation if it exceeds the conditions outlined in this agreement.” Schumer, for his part, scribbled, “I will try to dissuade Joe on much of this” below his signature. In other words, the document seems to constitute a guarantee that Manchin will vote for a reconciliation package that meets all his criteria, not a promise to vote against one that doesn’t. Finally, Manchin’s demands on climate look surprisingly benign (for a [coal baron,](https://theintercept.com/2021/09/03/joe-manchin-coal-fossil-fuels-pollution/) anyway). He doesn’t declare his opposition to a clean energy standard, only asking that it be overseen by his Senate committee. He says he won’t support new subsidies for renewable energy unless fossil fuel subsidies are also maintained, but the current legislation already (unfortunately) maintains such subsidies. He wants carbon capture and storage (CCS) included in the bill, which it already is. All of which is to say: If this is Manchin’s starting point, a deal that secures a lot of green investment and a significant expansion of the American welfare state seems possible. Which shouldn’t be taken for granted, considering that Democrats boast a single-vote Senate majority that hinges on a guy from one of America’s reddest states.