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**Prohibition requires forbidding a practice—the plan is only a hindrance**

**Van Eaton** et al **17** (Joseph Van Eaton, Gail Karish Gerard Lavery Lederer, lawyers for BEST BEST & KRIEGER, LLP. Michael Watza, KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK, “BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C”, COMMENTS OF SMART COMMUNITIES SITING COALITION, March 8, 2017 , https://tellusventure.com/downloads/policy/fcc\_row/smart\_communities\_siting\_coaltion\_comments\_mobilitie\_8mar2017.pdf)

2. What are at issue legally are prohibitions and effective prohibitions, and not hindrances, as the Commission seems to suggest in its Notice. The term “prohibit” is not defined in the Act, but it has an ordinary meaning: to formally forbid (something) by law, rule, or other authority; or to “prevent, stop, rule out, preclude, make impossible.” A mere “hindrance” “is simply not **in accord with** the ordinaryand fairmeaning” ofthe termprohibit,104 and can provide no basis for additional Commission intrusions on local authority over wireless facilities. Much of what Mobilitie complains about is a “hindrance” at most (and usually a hindrance magnified by its own actions).

#### Only per se illegality forbids practices---balancing tests rely on rule of reason which is the opposite

**Beschle 87** (Donald L. Beschle-Associate Professor of Law, The John Marshall School of Law. B.A., 1973, Fordham University; J.D., 1976, New York University School of Law; LL.M., 1983, Temple University School of Law. March. CURRENT TOPIC IN ANTITRUST: "What, Never? Well, Hardly Ever": Strict Antitrust Scrutiny as an Alternative to Per Se Antitrust Illegality., 38 Hastings L.J. 471)

None of these positions has been accepted by the courts, possibly due to the apparent intent of Congress to maintain strict sanctions against resale price maintenance. 145 However, if antitrust theorists continue to criticize the anomaly of treating only one form of vertical restraint as per se illegal, the most likely way this conflict will be resolved is by the Supreme Court reversing its position on vertical price fixing. With respect to **tying** arrangements, legislative support of **unwavering prohibition** is **less recent**, if not less clear, and the Court has already come **close** to **abandoning the per se concept**. Four Justices already support rule of reason treatment for such practices. 146 Given the likely changes in the composition of the Court in the near future, **rule of reason** analysis may be adopted as the test for tying arrangements as well as other vertical restraints. 147

Less attention has been paid in recent literature to per se rules involving boycotts and horizontal market division. With respect to boycotts, this sanguinity may reflect the perception that the surviving per se rule is so limited that it has relatively little impact on antitrust enforcement. 148 Few significant cases have involved **horizontal** market division, unaccompanied by price fixing, since the unambiguous classification of such **practices** as per se illegal in 1972. 149 Still, some have criticized the application of **per se rules** in these cases. Topco remains, in the view of some, a classic example of how horizontal market division can occasionally have procompetitive results. 150

Only with respect to the classic per se offense, horizontal price fixing, has criticism been rare. Nevertheless, an occasional voice has been raised to argue that per se analysis should be abandoned even with respect [\*500] to this "hard core" Sherman Act violation. 151 Although there is little reason to believe that courts will seriously reconsider the designation of horizontal price fixing as per se illegal, the mere existence of such arguments indicates the strength of the movement against per se analysis. Even when criticism of per se rules does not lead to their explicit abandonment, it helps to create an atmosphere in which the surviving per se rules are continually narrowed through judicial circumscription. The expanded use of the **rule of reason** leads, then, to **more permissive** judicial **treatment** for those types of conduct **once** treated as **clearly anti-competitive**. 152

Of course, the critics of per se analysis have not had the field entirely to themselves. Those advocating strict application of the Sherman and Clayton Acts have counterattacked, putting forward both relatively narrow defenses of particular per se rules 153 and broad defenses of the concept of per se illegality. 154 Some advocates of broad application of per se rules argue that economic efficiency is the dominant goal of antitrust analysis and attempt to demonstrate that efficiency is not promoted by practices traditionally labelled per se illegal. 155 Others contend that efficiency must yield to, or at least share the spotlight with, other values that call for strict application of antitrust prohibitions even in the face of possible efficiency losses from such enforcement. 156

It is not surprising that defenders of the per se concept are losing ground, both in the academic literature and in the courts. This situation, however, is much less a reflection of any defect in the general position advocating vigorous antitrust enforcement than an indication of a fundamental flaw in the concept chosen to implement that position. From the earliest days of antitrust, advocates of vigorous enforcement have made strong and appealing arguments for listing certain types of conduct as [\*501] clearly and invariably forbidden. 157 Not only would this categorization make enforcement of the antitrust laws quicker and more certain, it would also serve to deter far more anticompetitive behavior. Certainty and judicial economy are no doubt valid concerns, and vigorous enforcement of the antitrust laws is certainly consistent with the spirit of the public and the legislators who adopted them. 158

But the use of the concept of per se illegality has been unfortunate. To the extent that the term means what it says -- that certain practices will invariably be illegal -- it is difficult to defend. If a practice is to be classified as invariably illegal, it should be so designated only upon a showing that it will always (or at least almost always) cause harm outweighing any benefits which it may produce. Some courts have so held, stating that the per se label will be reserved for practices which will always, or almost always, fail the standard test of antitrust analysis, the rule of reason. 159

Absolutes, however, even when qualified with the word "almost," are hard to prove. In an area as complex as the effect of concerted business practices on competition, numerous counterexamples, both hypothetical and actual, may be advanced to rebut the contention that any such practice invariably injures competition. To defend per se illegality, then, is to defend something almost inevitably indefensible. The only possible way to defend the concept effectively is to resort to the course currently being taken by the Supreme Court: to narrow the categories so far as to make the question of categorization almost as complex as full rule of reason analysis. At that point, the defense of the per se concept becomes merely an exercise in semantics.

If the concept of per se illegality is indefensible, except when so refined as to make it largely irrelevant, why continue to defend it at all? Why not simply abandon the field to the rule of reason? It seems clear that the battle over the per se rules is **less** a clash over those **specific rules** than a battle over **basic attitudes toward antitrust enforcement**. For better or worse, per se rules have become linked in most minds with **vigorous** enforcement; to **favor one** is to **favor the other**. The **rule of reason**, on the other hand, is associated with a **tolerant** attitude toward antitrust defendants. Rule of reason analysis often -- perhaps **usually** -- leads to a [\*502] finding of **no liability**. Its complexity and uncertainty can deter plaintiffs from even attempting to challenge behavior which many would say should be challenged. Since, to so many, rule of reason analysis means a type of antitrust enforcement under which **much anticompetitive activity** will be **permitted**, per se analysis is defended, not so much for its own virtues, but rather because of fears of the permissive nature of its sole obvious rival.

#### VOTE NEG:

#### FIRST---Ground---balancing tests devastate core links, because they allow the practice when it’s beneficial. AND, creates a moving target, because the disallowed behavior is context-dependent. And bidirectionality---rule of reason creates legally protected practices

#### SECOND---limits---they lead to a wave of legal standard affs that avoid generics

### 1NC---CP

#### The United States federal government ought to initiate notice-and-comment rulemaking to establish a balancing test that expands the extraterritorial scope of its antitrust laws and implement the results pursuant to Administrative Procedure Act protocol.

#### The plan’s unannounced, unconditional mandate locks out public input and violates due process---turns solvency.

Chopra & Khan 20, \*Rohit, MBA, Commissioner, Federal Trade Commission; & \*\*Lina M., JD, current chair of the Federal Trade Commission, Counsel of the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary. (2020, "The Case for “Unfair Methods of Competition” Rulemaking," *University of Chicago Law Review*, Vol. 87 Iss. 2, Article 4, pg. 359-367, Accessible at: <https://chicagounbound.uchicago.edu/uclrev/vol87/iss2/4>)

I. THE STATUS QUO: AMBIGUOUS, BURDENSOME, AND UNDEMOCRATIC?

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process.

One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the “rule of reason” standard. The “rule of reason” involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for “speculative, possibly labyrinthine, and unnecessary” analysis and appears to exceed the abilities of even the most capable institutional actors.1 Generalist judges struggle to identify anticompetitive behavior2 and to apply complex economic criteria in consistent ways.3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer.4 And if a standard isn’t administrable, it won’t yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms into their business decisions.5 Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process—a fundamental principle in our legal system.6

**[BEGIN FOOTNOTE 6]**

6. See FCC v Fox Television Stations, Inc, 567 US 239, 253 (2012). A lack of fair notice raises constitutional due process concerns. As the Supreme Court has explained, fair notice concerns arise when a law or regulation “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” Id (citations omitted)

**[END FOOTNOTE 6]**

Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication “may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of businessmen, the private bar, and the government agencies.”7 Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades.8

The current approach to antitrust also makes enforcement highly costly and protracted. In 2012, the American Bar Association (ABA) published the report of a task force that sought to “study ways to control the costs of antitrust litigation and enforcement.”9 The task force, the authors explained, was “a response to concerns” about both “the costs imposed on businesses by the American system of antitrust enforcement” and “the length of time required to resolve antitrust issues both in litigation and in enforcement proceedings.”10 Out-of-control costs undermine effective antitrust enforcement by agencies and private litigants, but may advantage actors who profit from anticompetitive practices and can treat litigation as a routine cost of business. Professor Michael Baye and Former Commissioner Joshua Wright have noted that generalist judges may be ill-equipped to independently analyze and assess evidence presented by economic experts.11 Because determining the legality of most conduct now involves complex economic analysis, courts have effectively “delegate[d] both factfinding and rulemaking to courtroom economists,” making courtroom economics “not just inevitable but often dispositive.”12 In fact, paid expert testimony now is often “the ‘whole game’ in an antitrust dispute.”13

Paid experts are a major expense. Some experts charge over $1,300 an hour, earning more than senior partners at major law firms.14 Over the last decade, expenditures on expert costs by public enforcers have ballooned.15 In a system that incentivizes firms to spend top dollar on economists who can use ever-increasing complexity to spin a favorable tale, the eye-popping costs for economic experts can put the government and new market entrants at a significant disadvantage.16

Another component of the burden is that antitrust trials are extremely slow and prolonged.17 The Supreme Court has criticized antitrust cases for involving “interminable litigation”18 and the “inevitably costly and protracted discovery phase,”19 yielding an antitrust system that is “hopelessly beyond effective judicial supervision.”20 That it can easily take a decade to bring an antitrust case to full judgment means that by the time a judge orders a remedy, market circumstances are likely to have outpaced it.21 The same 2012 ABA report suggested that lengthy, costly litigation may be contributing to reduced government-enforcement efforts over time relative to the expansion of the US economy.22

Lastly, the current approach deprives both the public and market participants of any real opportunity to participate in the creation of substantive antitrust rules.23 The exclusive reliance on case-by-case adjudication leaves broad swaths of market participants watching from the sidelines, lacking an opportunity to contribute their perspective, their analysis, or their expertise, except through one-off amicus briefs.24 Nascent firms and startups are especially likely to be left out—despite the vital role they play in the competition ecosystem—given that they do not comprise a significant portion of the parties represented in litigated matters, and they usually lack the resources to engage in amicus activity. Furthermore future entrants, whose interests should be carefully considered in all aspects of competition law and policy, have no voice.

Firms, entrepreneurs, workers, and consumers across our economy vary wildly in their experiences and perspectives on market conduct. Enforcement and regulation of business conduct can more successfully promote competition when it incorporates more voices and evidence from across the marketplace.

#### Fidelity to notice-and-comment [N&C] solves.

Chopra & Khan 20, \*Rohit, MBA, Commissioner, Federal Trade Commission; & \*\*Lina M., JD, current chair of the Federal Trade Commission, Counsel of the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary. (2020, "The Case for “Unfair Methods of Competition” Rulemaking," *University of Chicago Law Review*, Vol. 87 Iss. 2, Article 4, pg. 367-370, Accessible at: <https://chicagounbound.uchicago.edu/uclrev/vol87/iss2/4>)

We see three major benefits to the FTC engaging in rulemaking under “unfair methods of competition,” even if the conduct could be condemned under other aspects of antitrust laws. As we describe above, the current approach generates ambiguity, is unduly burdensome, and suffers from a democratic participation deficit. Rulemaking can benefit the marketplace and the public on all of these fronts.

First, rulemaking would enable the Commission to issue clear rules to give market participants sufficient notice about what the law is, helping ensure that enforcement is predictable.43 The APA requires agencies engaging in rulemaking to provide the public with adequate notice of a proposed rule. The notice must include the substance of the rule, the legal authority under which the agency has proposed the rule, and the date the rule will come into effect.44 An agency must publish the final rule in the Federal Register at least thirty days before the rule becomes effective.45

These procedural requirements promote clear rules and provide clear notice. As the Supreme Court has stated, a “fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”46 Clear rules also help deliver consistent enforcement and predictable results. Reducing ambiguity about what the law is will enable market participants to channel their resources and behavior more productively and will allow market entrants and entrepreneurs to compete on more of a level playing field.

Second, establishing rules could help relieve antitrust enforcement of steep costs and prolonged trials. Identifying ex ante what types of conduct constitute “unfair method[s] of competition” would obviate the need to establish the same exclusively through ex post, case-by-case adjudication. Targeting conduct through rulemaking, rather than adjudication, would likely lessen the burden of expert fees or protracted litigation, potentially saving significant resources on a present-value basis.47

Moreover, establishing a rule through APA rulemaking can be faster than litigating multiple cases on a similar subject matter. For taxpayers and market participants, the present value of net benefits through the promulgation of a clear rule that reduces the need for litigation is higher than pursuing multiple, protracted matters through litigation. At the same time, rulemaking is not so fast that it surprises market participants. Establishing a rule through participatory rulemaking can often be far more efficient. This is particularly important in the context of declining government enforcement relative to economic activity, as documented by the ABA.48

And third, rulemaking would enable the Commission to establish rules through a transparent and participatory process, ensuring that everyone who may be affected by a new rule has the opportunity to weigh in on it, granting the rule greater legitimacy.49 APA procedures require that an agency provide the public with meaningful opportunity to comment on the rule’s content through the submission of written “data, views, or arguments.”50 The agency must then consider and address all submitted comments before issuing the final rule. If an agency adopts a rule without observing these procedures, a court may strike down the rule.51

This process is far more participatory than adjudication. Unlike judges, who are confined to the trial record when developing precedent-setting rules and standards, the Commission can put forth rules after considering a comprehensive set of information and analysis.52 Notably, this would also allow the FTC to draw on its own informational advantage—namely, its ability to collect and aggregate information and to study market trends and industry practices over the long term and outside the context of litigation.53 Drawing on this expertise to develop rules will help antitrust enforcement and policymaking better reflect empirical realities and better keep pace with evolving business practices.

Given that the FTC has largely neglected this tool, some may question the Commission’s authority to issue competition rules and the legal status these rules would have.54 Indeed, a common misconception is that this authority is extremely limited because FTC rulemaking is subject to the extensive hurdles posed by the Magnuson-Moss Warranty–Federal Trade Commission Improvements Act55 (“Magnuson-Moss”). In reality, Magnuson-Moss governs only rulemakings interpreting “unfair or deceptive acts or practices.”56 For rules interpreting “unfair methods of competition,” the FTC has authority to engage in participatory rulemaking pursuant to the APA. Several antitrust scholars have affirmed this authority, and the Appendix lays out further background on and discussion of it.57

#### Democracy solves extinction.

Twining 21, PhD, president of the International Republican Institute, former director of the Asia Program at the German Marshall Fund. (Daniel, 10-10-2021, "America must double down on democracy", *The Hill*, <https://thehill.com/opinion/campaign/575693-america-must-double-down-on-democracy>) \*language edited

The hard truth is that a world that is less free is one that is less secure, stable and prosperous. The greatest dangers to the American way of life emanate from hostile autocracies. There are no quick fixes, but the best antidotes to the challenges of great-power conflict, terrorism and mass migration of desperate refugees lie in the building of inclusive democratic institutions — and working with allied democracies to sustain the free and open order that China, in particular, wishes to replace with a world that’s safe for autocracy. The conventional wisdom that authoritarianism has popular momentum is wrong. No one anywhere is taking to the street to demand more corrupt governance, the adoption of one-man rule, a stronger surveillance state, or greater intervention by malign foreign powers. Democratic freedoms are unquestionably under assault in many nations. Autocrats are aggressive precisely because of the growing demands for change in their more modern, connected societies — and the rising risk that middle classes in nations such as China and Russia will not be willing forever to forfeit political rights for prosperity. American retrenchment and isolationism compound the danger. It would be nice to live in a world where failed states and dictatorships were a problem for someone else to worry about. But rather than producing stability, Western retreat only emboldens autocrats in ways that amplify dangers to American national security. We know that violent extremism flourishes under state failure and dictatorship. Broken states become breeding grounds for extremist groups because they leave vacuums that terrorists are only too happy to fill. In nations without democratic accountability, citizens become drawn to the only forms of expression available to them, which are often violent and extreme. The good news is that we have billions of allies around the world: citizens on every continent chafing for greater freedom and dignity. They do not want U.S. military-led nation-building. They want peaceful support for their independent efforts to create democratic space in systems distorted by overweening government control, dangerous governance gaps and foreign malign influence. The free world cannot be neutral in the face of autocracy’s resurgence. Rather, it should play to its strengths. The appeal of democratic opportunity is a strategic asset for the United States — despite our own shortcomings — because people around the world similarly aspire to live in societies that guarantee justice, rights and dignity. America’s closest allies are democracies. Democracies don’t fight each other, export violent extremism, or produce the conflicts that drive mass migration. Democracies are better partners in fighting terrorism, human trafficking and poverty, as well as establishing reliable trading relationships. Open societies incubate the technologies that will help solve the world’s most pressing problems, including climate change. Citizens can hold leaders accountable when they fall short, and democratic institutions are stronger than any [individual] ~~man~~ — as America itself witnessed after the assault on the U.S. Capitol on Jan. 6.

### 1NC---DA

#### The FTC is focusing on health care and big tech. Health care is under the radar

Levine 8-25-2021, 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*, 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.

#### The plan requires an unexpected, significant and drawn-out expenditure of finite law enforcement resources

Dafny 21, Professor of Business Administration at the Harvard Business School and the John F. Kennedy School of Government, and former Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission. Professor Dafny’s research focuses on competition in health care markets, and the intersection of industry and public policy. (Leemore, “The Covid-19 Pandemic Should Not Delay Actions to Prevent Anticompetitive Consolidation in US Health Care Markets,” *Pro Market*, <https://promarket.org/2021/06/10/covid-pandemic-consolidation-pandemic-monopoly/>)

However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts. To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses. The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices. The substantial resources required to challenge transactions, paired with stagnating enforcement budgets, may explain why authorities have elected not to challenge some horizontal transactions they would likely have challenged in previous eras. Using data on a wide range of industries, antitrust scholar John Kwoka documents that enforcers rarely raise concerns about changes in market structure that used to draw scrutiny—that is, mergers that yield five or more market participants.

#### Resources are finite and are drawn from under-the-radar M and A priorities

McCabe 18, covers technology policy from The Times' Washington bureau, formerly of Axios (David, “Mergers are spiking, but antitrust cop funding isn't,” Axios, https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html)

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers. Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say. What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow. What's happening: More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012. Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017. Funding for the FTC has fallen 5% since 2010 (adjusted for inflation). An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment. Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April. Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three. Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner. Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further. “Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’" "It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email.

#### Health consolidation collapses public health---specifically rural care

Numerof 20, PhD @ Bryn Mawr, internationally recognized consultant and author with over 25 years of experience in the field of strategy development and execution, business model design, and market analysis (Rita, “Covid-Induced Hospital Consolidation: What Are The Impacts On Consumers, And Potentially The President,” *Forbes*, https://www.forbes.com/sites/ritanumerof/2020/11/11/covid-induced-hospital-consolidation-what-are-the-impacts-on-consumers-and-potentially-the-president/?sh=692d6fc94da0)

Covid-19 has initiated yet another wave: A wave of hospital mergers and acquisitions that will have devastating consequences for public health if industry doesn’t soon execute an about-face. Whether because they’re on the brink of bankruptcy and have subscribed to the half-truth that size is protective, or because they think they can score some good deals and believe scale and success are synonymous, the financial fallout of Covid-19 has caused many hospital executives to make consolidation a core part of their future plans. With the intent of increasing care quality and decreasing consumer costs despite these challenging times, the merger between Shannon Medical Center and Community Hospital and partnership between Intermountain and Sanford Health are just two examples. There are multiple reasons why consumers absolutely cannot afford for industry to bulk up in an effort to weather this storm. The first is that the positive efforts executives claim consolidation will help them accomplish often prove to be futile. Research shows that wherever market concentration is high, there are also higher prices for both consumers and the employers who provide their healthcare coverage. In the absence of competition, costs increase and quality deteriorates. That’s the opposite of progress. Second, generally speaking, the union of two institutions with operational shortcomings only creates one larger institution with even more operational shortcomings! That’s not progress either. Third, Covid-induced consolidation will only make future progress many times more difficult. The larger an organization is, the more it will struggle to rapidly adapt to healthcare disruptions like we’re seeing today. Retail giants like Walmart, Walgreens, Amazon and CVS are pivoting to cater to healthcare consumer demands for affordability and accessibility. Right now, they’re still a blip on the radar relative to mainstream healthcare delivery, but they are looking to eventually corner the market and drive the industry forward. And as they continue down this path, consolidated healthcare systems will be left behind, potentially at the expense of the consumers in that area. The potential impact of continued consolidation on rural patients is especially concerning. Rural communities may have a limited number of the big-box retailers mentioned above. And the unfortunate fact of the matter is that when a larger hospital or health system purchases a smaller, rural hospital, it’s usually only a matter of time before the purchasing system realizes that unless they drastically pare down and reconfigure operations, the acquired hospital will never be profitable. Many eventually decide to close up shop, in some instances reducing or even eliminating rural patients’ options for care delivery. In the absolute worst-case scenario, this is exactly the reality all consumers could face if consolidation continues at its current pace. In theory and if left unchecked, all of the hospitals in the United States could be owned by only a handful of mammoth systems that then lack incentive to continually deliver quality services at lower total cost of care.

#### Rural care is key to US ag exports

Lichtenwald 16, CEO of Medsphere Systems Corporation (Irv, “Is CMS Efforts Enough to Transform Rural Healthcare?,” http://hitconsultant.net/2016/02/22/32016/)

The scenario is far from unrealistic. For the most part, non-urban healthcare organizations are not doing well. In fact, almost every rural hospital in the country is operating near the margin or in the red. According to iVantage Health Analytics Senior Vice President Michal Topchik, speaking to Health Data Management, 67 rural hospitals have closed since 2010, and 283 were vulnerable to closure last year. Already in 2016 iVantage has identified 673 vulnerable rural hospitals, with 210 at very high risk. While only about 15 percent of the American population, roughly 46 million people, live in rural areas, they do some of the nation’s most essential work. Mostly, they grow food, produce energy or provide services to the people that grow food and produce energy. Obviously, the rural healthcare situation matters in terms of food and energy security at home, but also in terms of economics—the United States is by far the largest global exporter of food, with roughly $40 billion separating America from number two, and is on the cusp of ending energy imports for the first time since 1950. In reality, rural healthcare is transitioning, not disappearing, mostly because doing nothing is just bad economics. People in rural areas need care. If they can’t get it locally, they have to be flown to the nearest facility, which ends up being more expensive over the long term than funding a local hospital. To their credit, the Centers for Medicare and Medicaid Services (CMS) are already aware of the situation in rural America and have been taking steps toward fixing it. Speaking recently to the National Rural Health Association, CMS Acting Administrator Andy Slavitt explained that the agency is “establishing a CMS Rural Health Council to work across the entire agency to oversee our work in three strategic priority areas– first, improving access to care to all Americans in rural settings; second, supporting the unique economics of providing health care in rural America; and third making sure the health care innovation agenda appropriately fits rural health care markets.” As Slavitt points out, rural Americans tend to be older, earn less money and they generally lack health insurance—more than 60 percent of citizens without health insurance live in rural areas in states that have not expanded Medicaid through the Affordable Care Act. Nearly 75 percent of government health insurance exchange users make less than 250 percent of the federal poverty level—currently a bit less than $12,000 a year for an individual and slightly more than $24,000 for a family of four. So, if the argument could be made that rural America is home to the greatest number of healthcare challenges, then it also represents the greatest opportunity. If we can make affordable healthcare work outside urban areas, we may have a template applicable to other scenarios. On Slavitt’s first two points—access and economics—CMS is working to sign rural Americans up for health insurance and adjusting requirements and payment models for rural care. Which brings us to the “innovation agenda,” Slavitt’s term for the digitization of healthcare and the all-in bet the federal government has made on the benefits of health IT. The goal here is to transform rural hospitals and clinics into efficient, wired, lean operations that can absorb the realities of rural care and still operate in the black. With 35 percent of rural hospitals losing money and almost two-thirds running a negative operating margin, there’s simply no way rural facilities can invest in health IT without help. From CMS, that help takes the form of several planned or in-process programs: – Medicaid State Innovation Model grants for technical support in smaller rural hospitals – Aggregation of services in rural communities creating benefits from population health – The Frontier Community Health Integration Project (summer 2016), developing and testing new models in isolated areas using telemedicine and integration approaches – The ACO investment model for hospitals that can’t invest in ACO infrastructure; the model now serves 350,000 rural beneficiaries through 1,100 rural providers – Incorporating telemedicine where appropriate; CMS is publishing a Medicaid final rule that for the first time allows for face-to-face encounters using telehealth It’s clear that CMS understands we can’t leave rural hospitals to fend for themselves. But it also seems clear that a lot of hospitals invested in electronic health records (EHRs) they could ill afford to qualify for Meaningful Use funds—dollars that seldom covered implementation costs for solutions that didn’t yield significant cost savings and required additional technical personnel. By and large, that MU money has been dispensed. The carrot has been eaten. What Medicare- and Medicaid-heavy hospitals can expect next is two sticks: more stringent reporting requirements necessitating EHR use and direct penalties (for now) related to Meaningful Use non-compliance. “The high capital and operating costs associated with health IT, specifically EHRs, have put some hospitals in a difficult position,” wrote Becker’s Hospital CFO in a prescient January 2014 article. “Do they absorb the financial hit now, even if they know they can’t afford it? Most organizations are doing so …” Yes, CMS is trying to help lessen the impact of that metaphorical beating, but these rural hospitals also have to make decisions to help themselves. Too many are paying for systems they can’t afford to maintain. Moreover, they are unable to invest in necessary security, leaving them increasingly open to data breaches. Many are also still handicapped by the costs of ICD-10 transition, for which there was no federal reimbursement. Rural hospitals need a comprehensive EHR platform that integrates with a revenue cycle system so they can properly capture charges and manage the billing process, and effectively collect on previously lost billing. These systems need to be available as a subscription service so that rural hospitals don’t have to come up with huge money down. And they can’t require the hiring of an additional 50 application specialists to make the new systems work. “The benefits of IT are still to come,” Standard and Poor’s Marin Arrick told Becker’s Hospital CFO more than two years ago. Still the economic crisis in rural care rages on, certainly lessening access to care for millions of Americans and arguably impacting the labor force that produces food, energy, etc.

#### US ag and food security stabilize the globe — collapse greenlights *great power wars*

Castellaw 17—Lieutenant General, former President of the non-profit Crockett Policy Institute (John, “Opinion: Food Security Strategy Is Essential to Our National Security,” https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security)

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy.

An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence.

Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability.

The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from American farmers and ranchers. Emerging markets currently purchase 20 percent of U.S. agriculture exports and that figure is expected to grow as populations boom.

Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs.

This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people.

Too often these situations deteriorate into shooting wars requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population.

Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being.

Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

### 1NC---CP

#### The United States federal government should:

#### --- substantially increase tax incentives and grants for technology research and development, immigration to the US, and STEM training programs; AND eliminate all restrictions on foreign trade.

#### --- fund the construction of synthetic trees designed for the capture of carbon dioxide globally, specifically in the Amazon.

#### --- Establish mandatory national nature ethics education

#### --- Provide economic incentives for sustainable fishing and farming practices including decreased reliance on pesticides

#### --- End all public subsidies that have a substantial damaging effect on nature

#### --- Increase international cooperation on species research, preservation, and relocation with critical environmental partners.

#### Plank one invigorates innovation which solves the entire first advantage

Savchuk 19, journalist, MS in urbanization and development. Citing Nicholas A. Bloom, Professor of Economics, School of Humanities and Sciences @ Stanford. Senior Fellow, Stanford Institute for Economic Policy Research. (Katia, 10-7-2019, "The Five Best Policies to Promote Innovation — And One Policy to Avoid", *Stanford Graduate School of Business*, https://www.gsb.stanford.edu/insights/five-best-policies-promote-innovation-one-policy-avoid)

The Top Five Policies for Boosting Innovation

Outlined in a recent paper in the Journal of Economic Perspectives, here are five policies that Bloom and his colleagues say can effectively drive innovation:

1. Offer Tax Incentives for R&D

The research is clear: Government tax subsidies and grants are the most effective way to increase innovation as well as productivity. Studies show that reducing the price of R&D by 10% increases investment in innovation by 10% in the long run. The U.S. has one of the least generous tax credit policies among developed countries, only cutting the cost of R&D spending by around 5%. Countries like France, Portugal, and Chile are the most beneficent, slashing the cost of R&D spending by more than 30%.

2. Promote Free Trade

Existing evidence suggests that opening trade can spark innovation by increasing competition, allowing new ideas to spread faster and dividing the cost of innovation over a bigger market. For example, researchers who summarized the findings of more than 40 papers in 2018 concluded that freer trade generally increased innovation in South America, Asia, and Europe (results from North America are more mixed). This policy can bear fruit in the medium run and doesn’t cost much to implement, but can increase inequality.

3. Support Skilled Migration

Even if there’s more funding for innovation, you won’t see it unless you have more scientists to do the research. The most direct way to increase the supply of researchers is to allow more high-skilled immigrants into the country. One paper showed that increasing the population of immigrant college graduates in the U.S. by one percentage point increased patents per capita by up to 18%.

4. Train Workers in STEM Fields

Another way to increase the supply of researchers in the long term is to invest in training them domestically. One option is to promote programs that boost the number of people studying science, technology, engineering, and math (STEM). Another is to expose more would-be inventors from disadvantaged backgrounds to role models and mentoring.

5. Provide Direct Grants for R&D

Compared to tax incentives, government grants — often to university researchers — can target projects that are likely to have the most long-term benefits. Research shows that grants to academics in turn results in more patents filed by private firms. However, it’s tough to track the impact of grants, since it’s possible that private R&D funding would have stepped up in their absence.

#### Plank two solves deforestation and warming

McFarland 16 [Matt McFarland, January 12, 2016, “Could artificial trees be part of the climate change solution?,” The Guardian, https://www.theguardian.com/environment/2016/jan/12/artificial-trees-fight-climate-change]

In the fight against climate change, trees are an ally. They suck in carbon dioxide, reducing the harmful greenhouse gases. But there’s a problem: we’re asking them to work overtime.

Trees can’t absorb enough of the carbon dioxide humanity is throwing at them unless we turn every inch of available land into a dense forest, according to Christophe Jospe, chief strategist at Arizona State’s Center for Negative Carbon Emissions.

But what if trees – or machines modelled after them – had superpowers? Artificial trees with otherworldly abilities are a great hope against climate change, since environmental experts say it’s not realistic to expect humanity to release significantly less carbon into the atmosphere. Our best bet might be to capture the excess carbon and store it or convert it into something useful, such as fuel.

Five years ago, a Boston group recruited two designers to develop artificial city trees. The trees they envisioned offered shade and would absorb carbon dioxide. The thinking was to place the trees where soil was too shallow to host traditional trees.

The group delivered great mock-ups, but little else has come from it so far. Finding funding is a challenge.

“You don’t want to be the first person to pay,” said Kimberly Poliquin, the director of ShiftBoston. “Scientists have figures, but you don’t know if that’s going to be the reality.”

Capturing and storing carbon isn’t yet the type of expense local governments and organisations can slide into their budgets. The cost of the technology is dropping, but not to a point where it’s affordable to install “forests” of these systems. Poliquin estimates an upfront cost of $350,000 for an artificial tree, but she expects prices to come down considerably. She hopes to develop a prototype of such a tree in one or two years.

There’s plenty of interest in removing carbon from the air. One method is to capture carbon directly from the smokestacks of power plants. Another method – which the Boston project targeted – is pulling carbon out of the open air, where it isn’t present in as much density. In theory, one square kilometre of artificial trees could remove 4m tons of carbon a year, according to the Center for Negative Carbon Emissions, which is developing a technology to work in open spaces.

Seven large-scale projects to capture and store carbon at power plants will arrive in 2016 and 20-17. Most are in the US and Canada. But more growth is needed before carbon capture and storage makes an impact on climate change. According to the Global Carbon Capture and Storage Institute, the 15 large-scale projects operating around the world can capture 28m tonnes of carbon dioxide per year. To keep climate change in check, we’ll need to process 4bn tonnes in 2040 and 6bn in 2050.

The Center for Negative Carbon Emissions is developing technology that it says is 1,000 times as effective as trees, per unit of biomass. The group is located in the desert because its technology responds well to warm, dry air and requires less energy in that environment.

Operating in cooler climates, such as Boston, would add expenses.

Once the technology is fully built out, the group estimates it will be removing carbon dioxide for about $100 a tonne. As is, there’s no resemblance to a tree as scientists – including those at Arizona State – focus on making the carbon-removal process effective and affordable rather than beautiful to look at.

#### Planks 4-6 solves biodiversity

**King ’14** — Miles King; (2014; “Five ways to stop mass extinction”; *The Guardian*; <https://www.theguardian.com/commentisfree/2014/dec/16/five-ways-to-stop-mass-extinction/>)

If it is possible to stop this mass extinction, humans need to take rapid and radical action. Here are five actions that I think will be needed: 1. Give places back to nature Some 3% of the oceans and 15% of land are classified as “protected areas”. In practice, many of these offer no protection to nature – more protected areas are needed, and they must be properly protected. 2. Change the way we view nature Nature is not another asset class to be traded on the world’s financial markets. Yet we see governments and businesses keen to implement [biodiversity offsetting](https://www.gov.uk/biodiversity-offsetting), where biodiversity lost as a result of development schemes is traded for the creation of nature sites elsewhere. Most would consider it heinous to develop a market in tradeable credits for children’s happiness – so why is it deemed acceptable to trade biodiversity? Humans have an absolute requirement for nature – for the food we eat, the oxygen we breathe, but also for the inspiration it provides, the sense of wellbeing, meaning, joy and solace it brings us all. We need to develop new ethics that transform the values people ascribe to nature and the way we relate to it. 3. Change our economic system so it values nature The neoliberal [obsession with economic growth](https://www.theguardian.com/commentisfree/2014/may/27/if-we-cant-change-economic-system-our-number-is-up) and profit is a major driver of this mooted global extinction. Gross domestic product (GDP) is the main way economists measure economic growth. Economists talk of “market failure”, when the external costs to nature of human activities are given no monetary value. A farmer can grow a profitable crop of maize, ignoring the costs of cleaning up the nearby river contaminated with silt, nitrogen fertiliser and pesticides; or the homes flooded further downstream. These costs are externalised and are either not addressed or are paid by the taxpayer. GDP counts the economic value of the crop, the cost of cleaning the nitrogen from the water and the cost of clearing up after the flood all as contributing positively to GDP. This makes no sense on any level. We need to radically transform the way nature is valued through economics. 4. End public subsidies that damage nature Perhaps the largest causes of nature destruction in Europe over the past 40 years are the common agricultural policy on land and the [common fisheries policy](https://www.theguardian.com/commentisfree/2011/mar/02/discard-common-fisheries-policy-waste-eu) at sea. These have paid farmers [to replace areas rich in nature with places almost entirely devoid of it](https://www.theguardian.com/commentisfree/2012/nov/26/europe-bung-landowners-farm-subsidies); and they have paid fisheries to empty the seas. All this has been paid for by taxpayers. It is time to abolish the CAP and the CFP and replace them with systems that only support farming and fishing practices that either do no harm or actively restore nature. Practices that continue to cause unnecessary damage to nature should be taxed or outlawed.

### 1NC---DA

#### Reconciliation-bill will pass next week, but it’s not inevitable. There’s more work to be done.

Woodruff, Alcindor and Deese 11-9-2021 (“White House ‘confident’ Congress will pass Build Back Better bill,” *PBS*,” pbs.org/newshour/show/white-house-confident-congress-will-pass-build-back-better-bill)

President Joe Biden is expected to sign the bipartisan infrastructure deal into law, securing a major legislative victory. But his larger economic and social spending package still remains a subject of concern as members of Congress mull its provisions. Yamiche Alcindor talks to Brian Deese, director of the National Economic Council for the Biden administration, about those negotiations. Judy Woodruff: President Biden will soon sign into law one major piece of his agenda, the bipartisan infrastructure deal, securing a major legislative victory. But there is still work to be done to get his larger economic and social spending package over the finish line. Yamiche Alcindor talks to one of the White House's key negotiators on where it all stands. Yamiche Alcindor: Since the infrastructure vote on Friday night, the Biden administration has directed its focus to the Build Back Better package. That's the $1.75 trillion bill with money for child care, health care, and climate change. It needs nearly every House Democrat and all 50 Senate Democrats on board to pass. Brian Deese is the director of the National Economic Council for the Biden administration. He's been a central figure in these negotiations. And he joins me now from the White House. Brian, thank you so much for being here. President Biden will soon pass the bipartisan infrastructure plan, but there were many lawmakers who wanted it tied to the Build Back Better act. What assurances can you give Americans that that Build Back Better act is going to become law? And how soon do you expect that to happen? Brian Deese, Director, National Economic Council: Well, for starters, what I can assure folks is that signing this historic infrastructure bill is going to do a lot of good for the country. We have waited decades to actually do something about infrastructure. And, in that period, the United States has fallen behind. We're 13th in the world in infrastructure. And with this piece of legislation that the president will sign soon, we're going to make historic investments in rebuilding both our physical infrastructure ports, and airports, roads, and bridges, transit, but also provide high-speed Internet to all Americans, clean water by replacing lead service lines across the country. So this is a big set of investments, a capital investment in America that we have waited way too long to do, and we're now finally going to make happen. And I think that's going to build real momentum for getting the second half of the president's economic agenda, the Build Back Better plan, into law. That will start next week, where we anticipate a vote in the House, and then onto the Senate as well.

#### Antitrust reform trades off with other legislative priorities

Carstensen 21, JD and MA @ Yale, Former Chair of U-W Law School, Senior Fellow of the American Antitrust Institute (Peter, “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.

#### Biden’s political capital is vital for passage---there’s no margin for error

Cadelgo 10-19-2021 (Chris, et al, “Biden bets his agenda on the inside game,” *Politico*, <https://www.politico.com/news/2021/10/19/biden-agenda-inside-game-516239>)

Before Joe Biden can fully pitch the public on his solutions to a lingering pandemic and economic rockiness, he’s got to finish the sale to his own party’s lawmakers. As Democrats on Capitol Hill brace in anticipation of a brutal midterm, Biden is spending an extraordinary amount of time and political capital behind the scenes to convince them to rally around a common framework for social and climate spending. His congressional huddles have accelerated, from phone calls on the White House veranda to one-on-one and group meetings — including two high-stakes Tuesday sit downs with moderates and progressives. He’s dialing up old friends to take their temperature about how his presidency is really fairing far beyond the Beltway. White House aides, in their own recent conversations with nervous allies, have repeatedly cited the flurry of presidential calls as a sign itself of Biden's commitment to getting the bills over the finish line, at times bristling at claims that he hasn't been involved enough. But Biden’s hours and hours of meetings don’t just reflect the precarious moment in which his presidency finds itself. They underscore the heavy reliance his White House has placed on an inside game, rather than the bully pulpit, to dislodge recalcitrant holdouts and move their agenda. "The president is a longtime policy guy and relationship guy. So he brings both kinds of skills to his work" to corral his party behind a trillion-dollar-plus package of progressive priorities, said Biden's former primary rival Sen. Elizabeth Warren (D-Mass.). Warren acknowledged, however, that Biden's level of influence over Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — both of whom met with Biden on Tuesday — remains to be seen: "We'll know the answer to that when we make it across the finish line and assess what we’ve got." Biden met Tuesday afternoon with Sens. Jon Tester (D-Mont.), Catherine Cortez Masto (D-Nev.) and Mark Warner (D-Va.), along with House progressives and moderates. "We just need to get to a number," Tester said after returning from the White House. "I think that he likes all the programs but I think everybody's negotiable at this point." Biden told progressives that tuition-free community college would likely be cut from the final package and the child tax credit may only be extended for a single year, according to a source familiar with the meeting. Rep. Pramila Jayapal, chair of the Congressional Progressive Caucus, said after the meeting that tuition-free college is "probably going to be out," and certain climate priorities were "challenging." "At this point we don't have a certainty on the final thing, but what we're hearing is good," Jayapal said. "We feel like the vast majority, if not all, of our priorities are in there, in some way, shape or form.” As Biden has worked on lawmakers in private — sometimes not putting a hard stop on his schedule so as not to stifle progress — he’s largely, though not entirely, resisted riskier public pressure campaigns that could backfire and are viewed as against his nature. Often, Biden has had just a single public event each day. Occasionally, there’s been no public interfacing at all. Eight times since Labor Day, the daily guidance issued by the White House has included only private meetings with Biden. A planned barnstorming of the country to sell the Build Back Better platform this summer was overshadowed by the chaotic U.S. withdrawal from Afghanistan. And congressional uncertainty amid infighting among Democrats on opposite poles of the party has overshadowed continuing trips by Cabinet officials and commandeered the media narrative in Washington. While Biden has held public events around the agenda, he has not done a formal press interview on it since Labor Day. On Wednesday, he will take a trip to his hometown of Scranton, Pa., to discuss the benefits of the legislative proposals, and on Thursday he will participate in a town hall broadcast on CNN. “The President won the most votes in history running on his Build Back Better agenda, unveiled the formal proposal in his first address to a joint session of Congress, and has made his case across the country ever since – along with his cabinet – which is deeply resonating with the American middle class," White House spokesman Andrew Bates said. Over the weekend, Biden called Sen. Bob Casey (D-Pa.) to discuss the upcoming trip, according to the senator, who is working on expanding care for older people and people with disabilities. “He wanted to get some suggestions about issues we should focus on, while we’re there,” Casey said. Still, inside the White House, the lower-key strategy has been seen as a necessity: Democrats have such slim congressional majorities that Biden, Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi have essentially no margin for error. That has put far more of the president’s focus on convincing a relatively small number of lawmakers to agree to details of the package, rather than using his time to sell policies that the general public supports. Chief among that small number of lawmakers are Manchin and Sinema, who remain resistant to the range of $1.9 trillion to $2.2 trillion that Biden and progressive lawmakers have discussed as a compromise top line for the social spending bill. "I'm told that they've given signs on the parking spaces for these two senators at the White House, that they're there so often,” Senate Majority Whip Dick Durbin (D-Ill.) said of Manchin and Sinema. “This president has been engaged from the start, in working with all the leaders, and particularly with those two senators." As he does that, Biden has labored to project a sense of optimism about his progress. White House officials say they’re encouraged by what they described as the accelerated pace of the talks, even as the Oct. 31 timetable appears exceedingly ambitious. Another explanation for the approach was baked in long ago. Biden is a 36-year veteran of the Senate with a heightened sense of his own negotiating instincts and abilities to move major legislation through the chamber. A self-admitted schmoozer, he has avoided doing much to shame Manchin and Sinema, preventing many details from their conversations and about his own preferences from spilling into public view. “There’s a lot of complaining about what the message has been on this package, but when you’re trying to fight for every vote, the coverage inevitably becomes about the process and numbers,” said John Podesta, a top aide to former Presidents Barack Obama and Bill Clinton and a major climate activist. “When you are inside talking one-on-one to members trying to convince people to stay with you or come on board it’s very hard to create a press environment which is different from what they’ve got.” Biden has resumed his in-person meetings with Congress’ return to Washington, including Tuesday sit-downs that involved Vice President Kamala Harris and Treasury Secretary Janet Yellen. There's a deepening acknowledgment that he has to hurry. “They really are now in a circumstance where they will take on more and more water unless they can close the framework,” Podesta added. “I think they’ll do it. But it’s not like they have forever. We’re talking about this week or next week.” In his meetings, Biden has spent a considerable amount of time on the party’s collective sense of urgency, aides and allies said, telling members of his party that they simply have to deliver. The conversations have at times been crisp, with Biden telling some Democratic skeptics that in order to be part of the negotiating process, they need to articulate policies that they are for and not just what they oppose — a message similar to the one Sen. Bernie Sanders (I-Vt.) has delivered to Manchin and Sinema. Biden’s goal has been to help establish broad areas of agreement before filling in the specifics. At the same time, Biden has repeatedly cautioned his senior aides and officials not to rely on generalizations, and to prepare recommendations based on data and input from the lawmakers about their states and districts. He has stolen bits of face time with lawmakers wherever he can, keeping members back after bill signings, for example, to sound them out, and gathering with them in their districts when he’s been on the road. Moving beyond sticking points has been a challenge, and Biden is known to implore lawmakers to step back and ignore a particular area and to temporarily focus on others where they might be able to make progress. “When you see him artfully and deftly manage these hard conversations with members and guide them into a productive place, it helps remind you there is room for optimism and there is a pathway here,” said Louisa Terrell, director of the White House Office of Legislative Affairs.

#### Reconciliation is key to pandemic preparedness

Kates 11-10-2021, PhD @ GWU, Senior Vice President and Director of Global Health & HIV Policy at KFF, where she oversees policy analysis and research focused on the U.S. government’s role in global health and on the global and domestic HIV epidemics. Widely regarded as an expert in the field, she regularly publishes and presents on global health and HIV policy issues and is particularly known for her work analyzing donor government investments in global health; assessing and mapping the U.S. government’s global health architecture, programs, and funding; and tracking and analyzing major U.S. HIV programs and financing, and key trends in the HIV epidemic, an area she has been working in for close to thirty years. Prior to joining KFF in 1998, Dr. Kates was a Senior Associate with The Lewin Group, a health care consulting firm, where she focused on HIV policy, strategic planning/health systems analysis, and health care for vulnerable populations. Among other prior positions, she directed the Office of Lesbian, Gay, and Bisexual Concerns at Princeton University. Dr. Kates has served on numerous federal and private sector advisory committees on global health and HIV issues, including PEPFAR’s Scientific Advisory Board, the NIH Office of AIDS Research Advisory Council, the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT), the board of the Global Fund to Fight AIDS, Tuberculosis and Malaria, and the Governing Council of the International AIDS Society. She is also a lecturer at the Johns Hopkins School of Advanced International Studies. (Jennifer and Adam Wexler, “Public Health Infrastructure and Pandemic Preparedness Provisions in the Build Back Better Act,” *KFF*, <https://www.kff.org/coronavirus-covid-19/issue-brief/public-health-infrastructure-and-pandemic-preparedness-provisions-in-the-build-back-better-act/>)

The Build Back Better Act, originally introduced in Congress on September 27, 2021, is a broad funding and programmatic package supported by President Biden. The bill, as first introduced by the House, was estimated to total $3.5 trillion. A more recent version now under consideration in the House is estimated to total significantly less, at $1.75 trillion, due to pressures to reduce the bill’s cost. Among the provisions in the bill are several designed to strengthen the public health infrastructure, including the workforce, and to support pandemic preparedness. While the original version of the bill provided $51.8 billion for these purposes (with $36 billion directed toward improving the public health infrastructure and $15.8 billion toward pandemic preparedness), the new version of the bill provides 63% less, or $19.2 billion, including $16.2 billion for public health infrastructure and $3 billion for pandemic preparedness. Almost all public health and preparedness areas in the original bill saw reductions, and several were eliminated. The following table identifies the provisions of the bill related to public health infrastructure and pandemic preparedness, their specific funding amounts, and activities supported.1 Unless otherwise specified, all funding would be made available until expended, and, if ultimately enacted, would build on funding provided in previous emergency spending bills passed by Congress to respond to the COVID-19 pandemic. Area/Provision Amount Activities HEALTH CARE INFRASTRUCTURE AND WORKFORCE $16,160,000,000 SEC. 31001. FUNDING TO SUPPORT CORE PUBLIC HEALTH INFRASTRUCTURE FOR STATE, TERRITORIAL, LOCAL, AND TRIBAL HEALTH DEPARTMENTS AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION $7,000,000,000 (provided between 2022-2026) Funding to support core public health infrastructure activities to strengthen the public health system and expand and improve activities of the Centers for Disease Control and Prevention (CDC). Activities include: health equity activities; workforce capacity and competency; all hazards public health and preparedness; testing capacity, including test platforms, mobile testing units, and personnel; health information, health information systems, and health information analysis (including data analytics); epidemiology and disease surveillance; contact tracing; policy and communications; financing; community partnership development; and relevant components of organizational capacity. Funding Allocation: To support core public health infrastructure activities throughout the U.S. Population-Based Grants: $3,500,000,000 provided to each State or territorial health department, and to local health departments that serve counties with a population of at least 2,000,000 or cities with a population of at least 400,000 people. Formula must consider population size and the Social Vulnerability Index. Competitive Grants: $1,750,000,000 provided through competitive grants to State, territorial, local, or Tribal health departments. NOTE: Of the grant funding provided to State health departments through formula and competitive awards, at least 25% must be reallocated to local health departments. CDC: $1,750,000,000 to expand and improve core public health infrastructure and activities at the CDC. SEC. 31002. FUNDING FOR HEALTH CENTER CAPITAL GRANTS $2,000,000,000 Funding to be awarded through grants and cooperative agreements to support community health centers for capital improvement projects. SEC. 31003. FUNDING FOR TEACHING HEALTH CENTER GRADUATE MEDICAL EDUCATION $3,370,000,000 Funding for direct payments and awards to support the establishment of new as well as the maintenance and expansion of existing graduate medical residency training programs. SEC. 31004. FUNDING FOR CHILDREN’S HOSPITALS THAT OPERATE GRADUATE MEDICAL EDUCATION PROGRAMS $200,000,000 Funding to support children’s hospitals that operate graduate medical education programs. SEC. 31005. FUNDING FOR NATIONAL HEALTH SERVICE CORPS $2,000,000,000 Funding to support the National Health Service Corps. SEC. 31006. FUNDING FOR THE NURSE CORPS $500,000,000 Funding to support the Nurse Corps. SEC. 31007. FUNDING FOR SCHOOLS OF MEDICINE IN UNDERSERVED AREAS $500,000,000 Funding to be awarded to support the establishment, improvement, or expansion of an allopathic or osteopathic school of medicine, with priority given to minority-serving institutions, and taking into consideration equitable distribution of awards among the geographical regions of the United States (including rural populations) in order to reach disadvantaged, rural, underserved, underrepresented, and low-income individuals. Among other things, supported activities include: recruiting, enrolling, and retaining students; curricula development, implementation, expansion, and modernization; facilities construction, modernization, or expansion; accreditation; and the hiring of faculty and staff. SEC. 31008. FUNDING FOR SCHOOLS OF NURSING IN UNDERSERVED AREAS $500,000,000 Funding to be awarded to support schools of nursing to enhance and modernize nursing education programs and increase the number of faculty and students at such schools, taking into consideration equitable distribution of awards among the geographical regions of the United States, the capacity of a school of nursing to provide care in underserved areas, and with priority to reach disadvantaged, rural, underserved, underrepresented, and low-income individuals. Among other things, supported activities include: recruiting, enrolling, and retaining students; creating, modernizing, enhancing, or expanding curricula and programs; hiring and retention of faculty; modernizing school infrastructure; and establishing partnerships with healthcare providers as well as interdisciplinary programs to further educational opportunities. SEC. 31009. FUNDING FOR PALLIATIVE CARE AND HOSPICE EDUCATION AND TRAINING $25,000,000 Funding to be awarded through grants and contracts to support the training of health professionals in palliative and hospice care as well as foster patient and family engagement, integration of palliative and hospice care with primary care and other appropriate specialties, and collaboration with community partners to address gaps in health care for individuals in need of palliative or hospice care with priority given to rural, medically underserved populations and communities, Indian Tribes or Tribal Organizations, or Urban Indian organizations. SEC. 31010. FUNDING FOR PALLIATIVE MEDICINE PHYSICIAN TRAINING $20,000,000 Funding to be awarded through grants and contracts to accredited schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs for the purpose of providing support for projects that fund the training of physicians or specialists who plan to teach or practice palliative medicine. SEC. 31011. FUNDING FOR PALLIATIVE CARE AND HOSPICE ACADEMIC CAREER AWARDS $20,000,000 Funding to be awarded to accredited schools of medicine, osteopathic medicine, nursing, social work, psychology, allied health, dentistry, or chaplaincy applying on behalf of board-certified or board-eligible individuals to promote the academic career development as hospice and palliative care specialists. SEC. 31012. FUNDING FOR HOSPICE AND PALLIATIVE NURSING $20,000,000 Funding to be awarded as grants and contracts to accredited schools of nursing, health care facilities, programs leading to certification as a certified nurse assistant, or partnerships of such schools and facilities to develop and implement programs and initiatives to train and educate individuals in providing interprofessional, interdisciplinary, team-based palliative care in health-related educational, hospital, hospice, home, or long-term care settings. SEC. 31013. FUNDING FOR DISSEMINATION OF PALLIATIVE CARE INFORMATION $5,000,000 Funding to be provided through the award of grants or contracts to public and nonprofit private entities to disseminate information to inform patients, families, caregivers, direct care workers, and health professionals about the benefits of palliative care throughout the continuum of care for patients with serious or life-threatening illness. PANDEMIC PREPAREDNESS $3,000,000,000 SEC. 31021. FUNDING FOR LABORATORY ACTIVITIES AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION $1,400,000,000 Acting through the Director of the Centers for Disease Control and Prevention, funding shall be used to renovate, improve, expand, and modernize State and local public health laboratory infrastructure as well as CDC laboratories. Activities supported include improving and enhancing: testing and response capacity; the Laboratory Response Network for rapid outbreak detection; genomic sequencing capabilities to detect emerging diseases and variant strains; and biosafety and biosecurity capacity. Funding may also be used to enhance the ability of the Centers for Disease Control and Prevention to monitor and exercise oversight over biosafety and biosecurity of State and local public health laboratories. SEC. 31022. FUNDING FOR PUBLIC HEALTH AND PREPAREDNESS RESEARCH, DEVELOPMENT, AND COUNTERMEASURE CAPACITY $1,300,000,000 Acting through the Assistant Secretary for Preparedness and Response Activities, funding shall be used to support: Surge capacity, including through construction, expansion, or modernization of facilities, to respond to a public health emergency, for procurement and domestic manufacture of drugs, active pharmaceutical ingredients, vaccines and other biological products, diagnostic technologies and products, personal protective equipment, medical devices, vials, syringes, needles, and other components or supplies for the Strategic National Stockpile Expanded global and domestic vaccine production capacity, including by developing or acquiring new technology and expanding manufacturing capacity through construction, expansion, or modernization of facilities Activities to mitigate supply chain risks and enhance supply chain elasticity and resilience for critical drugs, active pharmaceutical ingredients, and supplies (including essential medicines, medical countermeasures, and supplies in shortage or at risk of shortage), drug and vaccine raw materials, and other supplies through the construction, expansion, or modernization of facilities, adoption of advanced manufacturing processes, and other activities to support domestic manufacturing of such supplies Activities conducted by the Biomedical Advanced Research and Development Authority for advanced research, standards development, and domestic manufacturing capacity for drugs, including essential medicines, diagnostics, vaccines, therapeutics, and personal protective equipment Increased biosafety and biosecurity in research on infectious diseases, including by modernization or improvement of facilities. SEC. 31023. FUNDING FOR INFRASTRUCTURE MODERNIZATION AND INNOVATION AT THE FOOD AND DRUG ADMINISTRATION $300,000,000 Funding provided to improve and modernize infrastructure at the Food and Drug Administration and to enhance food and medical product safety as follows: $150,000,000 for improving technological infrastructure, including through developing integrated systems, and improving the interoperability of information technology systems. $150,000,000 for modernizing laboratory infrastructure of, or used by, the Food and Drug Administration, including modernization of facilities related to, and supporting, such laboratory infrastructure, including through planning for, and the construction, repair, improvement, extension, alteration, demolition, and purchase of, fixed equipment or facilities.

#### Extinction

Mooney 21, Senior Communications and Advocacy Manager @ (Coalition for Epidemic Preparedness Innovations) (Tom, “Preparing for the next “Disease X”,” CEPI, <https://cepi.net/news_cepi/preparing-for-the-next-disease-x/>)

We cannot develop vaccines against all potential viral threats, but we could produce a library of prototype vaccines and other biological interventions against representative pathogens from each of these 25 viral families. Having such a library of prototype vaccines, which could be ‘pulled off the shelf’, and advanced into clinical testing as soon as a related threat emerges would dramatically accelerate the development of vaccines. We also know that beta coronaviruses that cause SARS and MERS are associated with case fatality rates of 10-35% (25-88 times worse than COVID-19) and that coronaviruses circulate widely in animal reservoirs. The emergence of a coronavirus variant combining the transmissibility of COVID-19 with the lethality of SARS or MERS would be utterly devastating. We must minimise this threat as a matter of urgency. One way to do this in the long-term would be to develop a vaccine that provides broad protection against coronaviruses in general. If we can produce vaccines against Disease X in a matter of months instead of a year or more, we could revolutionise the world’s ability to respond to epidemic and pandemic diseases. Disease X and other emerging infectious diseases pose an existential threat to humanity. But for the first time in history, with the right level of financial commitment and political will, we could credibly aim to eliminate the risk of epidemics and pandemics.

## 1NC---Cartels

### 1NC---Turn

#### Inflation is constrained now---but international growth triggers it

Miller 21, CFP, MSFS (Mark, “ARE WE ON THE BRINK OF AN INFLATION CRISIS?,” <https://www.northoaksfs.com/blog/are-we-on-the-brink-of-an-inflation-crisis>)

Concerns over an inflation scare are rising as investors question whether an accelerating US economy supported by pent-up demand will overheat amid a backdrop of historic fiscal and monetary stimulus. With roughly $3 trillion worth of fiscal stimulus set to take effect in 2021 and a Federal Reserve (Fed) that has expressed its commitment to maintain extraordinary monetary support until its objective of maximum employment is achieved, the concerns are reasonable. Adding to inflation fears, the Fed’s strategy to allow inflation to modestly overshoot its 2% target raises the concern that it may end up scrambling to raise interest rates to control inflation—potentially tightening financial conditions in the process. While we do believe inflation may run hotter than it has in recent years, we believe worries of runaway inflation are overdone and that the upside risk for core inflation will be capped at around 3% for the full year in 2021—and likely will run meaningfully lower. NEAR-TERM PRESSURES APPEAR WELL CONTAINED The US economy has come a long way, but it will take synchronized global growth before economic risks truly begin to abate, and this should limit inflationary pressure as well. Europe, Japan, and other regions have not been able to make the same progress on vaccination efforts, and mixed success in their prolonged battles against COVID-19 has led to slower economic activity relative to the US. We’ve also discussed how some areas of the economy have not participated in the recovery to the same degree, and the bifurcation between goods and services in the US is a perfect example. It’s no secret that service industries have borne the brunt of the economic impact of the pandemic, and this relationship is well illustrated by the changes in the core consumer price indexes (CPI) for goods and services [Figure 1]. Core service inflation comprises roughly 60% of the broader core CPI measure, so as long as services CPI remains subdued, it is difficult to imagine an environment of runaway inflation taking place. The unemployment rate is currently 6.3%, which should keep wage pressures from materializing in inflation. Further, labor force participation remains about 2% lower than pre-pandemic levels, suggesting the headline unemployment rate is understating the true level of unemployment in the economy. With considerable slack remaining in the US labor market, inflation should remain reasonably contained in the near term.

#### So does forced fast growth

Pettinger 17, studied PPE at LMH, Oxford University and works as an economics teacher and writer (Tejvan, “Conflict between economic growth and inflation,” <https://www.economicshelp.org/blog/458/economics/conflict-between-economic-growth-and-inflation/>)

With higher economic growth, people may start to expect inflation – and this expectation of rising prices can become self-fulfilling. Therefore, rapid economic growth tends to cause upward pressure on prices and wages – leading to a higher inflation rate. Basically, If economic growth is above the long run trend rate (average sustainable rate of growth over a period of time) then inflation is likely to occur. Lawson Boom – late 1980s An example of high growth causing inflation was the Lawson boom of the 1980s. In this period, economic growth reached an annualised rate of up to 5%. This was much higher than the UK’s long-run trend rate of growth (of around 2.5%) and this rapid growth caused inflation to increase to 11% for some months. High economic growth in the late 1980s – led to high inflation. The recession of 1991, brought inflation down. Economic growth and low inflation It is possible that we can have economic growth without causing inflation. If growth is caused by increased productivity and investment, then the productive capacity of the economy can increase at the same rate as aggregate demand (AD). This enables economic growth without inflation. For example, between 1993 and 2007, the UK experienced low inflationary growth. This is partly due to economic growth being sustainable i.e., close to the 2.5% average; it was also due to productivity improvements such as privatisation and more flexible labour markets. Diagram showing low inflationary growth Low inflation causes long-term economic growth It is also argued that low inflation can contribute to a higher rate of economic growth in the long term. This is because low inflation helps promote stability, confidence, security and therefore encourages investment. This investment helps promote long-term economic growth. If an economy has periods of high and volatile inflation rates, then rates of economic growth tend to be lower. The cost-push inflation of 1973 (rising oil prices) led to recession because the higher prices lead to declining disposable income. High Inflation and Low Growth It is possible that an economy can experience low growth and high inflation (e.g. in 2009, 2011, 2017) SRAS-shift-left This can occur if there is cost-push inflation. Cost-push inflation could be caused by rising oil prices. It increases costs for firms and reduces disposable income. Therefore, there is lower growth, whilst high inflation. This is sometimes known as stagflation. In 2011, the UK is experienced a fall in the rate of economic growth and relatively high inflation. The inflation was caused by Rising food prices/oil prices Devaluation of the pound – causing rising import prices. Rising taxes Therefore, despite low growth, inflation was high. Conclusion There can be a conflict between economic growth and inflation. In periods of rapid economic growth, inflation is likely to rise. However, it is possible to have both low inflation and positive economic growth – so long as the growth is sustainable and productive capacity increases at a similar rate to AD.

#### Unchecked inflation sends the economy into a tailspin---turns the aff

Bartash 21, citing Stephen Stanley, chief economist at Amherst Pierpont Securities. (Jeffry, 9-25-2021, "The Fed has bet on a future of low inflation. Here's what could go wrong", *MarketWatch*, <https://www.marketwatch.com/story/the-fed-has-bet-on-a-future-of-low-inflation-heres-what-could-go-wrong-11632320184>)

The Federal Reserve has bet that high U.S. inflation will fade back to pre-pandemic lows in the next year or so, but if the wager is wrong it could create more hardship for millions of people and even sap an economic recovery.

The most immediate threat from high inflation is the erosion in household buying power, economists say. Prices are now rising faster than wages and making it harder for families to meet their needs, especially those on lower incomes.

If inflation remains stubbornly high, the Fed could also be forced to raise interest rates sooner than it planned and risk upsetting a strong economic recovery.

In a worst-case scenario, critics contend, consumers and businesses could come to expect steadily rising prices and make it a self-fulfilling prophecy. Such a broad shift in attitude after a few decades of remarkably stable inflation could make it harder for the Fed to manage the economy in the longer run.

“Once people start to expect inflation to be higher, they change their behavior in ways that make it harder to get inflation to come back down,” said Stephen Stanley, chief economist at Amherst Pierpont Securities.

### 1NC---!D---Cartels Adv

#### Supply chain connections and alliance networks between countries like China and NoKo solve the integration impact BUT they have to win Taiwan accepts Chinese independence to access the impact which takes out their other impacts.

#### No impact to economic strength — the ILO is resilient

Mousseau 19, PhD, Professor @ the University of Central Florida. (Michael, 7/29/19, “The End of War: How a Robust Marketplace and Liberal Hegemony Are Leading to Perpetual World Peace”, *International Security*, Volume 44, Issue 1, <https://www.mitpressjournals.org/doi/full/10.1162/isec_a_00352?mobileUi=0&amp>) \*Contractualist societies = system in which individuals normally obtain securities, including incomes and financial securities, through contracts with strangers in a market; i.e. liberalism

Reports of the demise of the liberal order, however, are greatly exaggerated. First, Hungary and Poland are newly contractualist states. The sociological nature of economic norms theory means that contractualist values should be more firmly rooted in older contractualist societies than in newer ones. This is corroborated with the natural experiment of Germany: in 1962 West Germany embraced contractualism (see table 1), but it was only after 1991 that East Germany could have become contractualist, when massive investments from the Federal Republic caused incomes in the marketplace to become higher than incomes obtainable from status relationships. Today, Germany’s populist movement is concentrated in the eastern part of the country and is largely nonexistent in the western part,83 which corroborates the expectation that some newly contractualist societies retain some of their status values even after a generation of robust opportunity in the marketplace. Deeper changes in values may not occur until generational cohorts initially socialized into status or axial economies have passed on. Second, the electorates in most of the thirty-five contractualist states listed in table 1 in 2010 have not experienced substantial increases in populist sentiment. Italy’s Five Star movement is often called populist but largely because of its anti-immigrant stance. Although an embrace of immigrants would seem consistent with contractualist values, opposition to large numbers of immigrants is arguably a rational response to what is essentially a huge external shock that has intensified in recent years. Britons voted to leave the European Union, but largely because they believed they were being treated unfairly in it. The rejection of unfair terms of trade, whether perceived correctly or not, is consistent with contractualist values. Third, the strength of institutions far exceeds that of any one person, including the president of the United States. Liberal values and institutions are rooted in contractualist economic norms and will not disappear simply because some leaders choose not to abide by them. For instance, although Trump may want the United States to withdraw from the North Atlantic alliance, this is not a view shared by Congress and the American people. Even members of Trump’s administration have often restrained him in ways consistent with contractualist values and institutions.84 In economic norms theory, the only way the United States’ contractualist values could shift to status or axial values would be through radical economic change. As mentioned above, economics is ultimately at the mercy of politics, as an influential coalition of rent-seekers could potentially collapse a contractualist economy by failing to sustain the highly inclusive marketplace or uphold the state’s credibility in enforcing of contracts. In recent years, the U.S. economy has begun tilting toward rent-seekers, given the growing role of private money in electoral campaigns and the increasing sophistication of rent-seekers in masking their activities though the manipulation of public opinion, including through their concentrated ownership of media outlets. Such rentierism could precipitate a change in U.S. values if it results in a retraction of the market substantial enough that newer generations began to obtain higher wages in newfound status networks than in the marketplace. In this way, the Trump phenomenon may reflect a pathology in U.S. governing institutions; but at least so far, it arguably has not extended to the American people. Most of Trump’s supporters seem to be drawn to him not for his expressions of status values, but for his pledges to fight a “rigged” system and create well-paying jobs. Whether or not Trump means what he says, many of his supporters saw a vote for him as an act of protest against the increasing corruption occurring in the United States, a clear contractualist expression.85 Although a collapse of the U.S. economy and transition to an axial or a status economy is always possible, the feedback loop of popular insistence on economic growth and a highly inclusive marketplace makes this unlikely. Aside from an external shock (such as nuclear war or climate devastation), such a transition could happen only if the rentiers somehow manage to remain in power long enough to institutionalize a permanently underemployed underclass. Fourth, even if the U.S. economy were to collapse and the United States became an axial or a status power, the combined economic might of all the other contractualist countries in the world is nearly twice that of the United States. The soft power of the United States in world politics lies not in its power to persuade, but in it being the largest of the contractualist states, and in its willingness to provide the public good of global security since the collapse of the pound sterling in late 1946. If the United States withdrew from its leadership role, the remaining contractualist powers would fill the vacuum. None of them has an economy relatively large enough to enable it to act as a natural leader and principal provider of global security, but it is the temperament of these states that they can easily form an international organization to coordinate and act on their shared security interests, even if some may choose to free ride. Fifth, current events need to be viewed within a larger context. Fernand Braudel pinpoints the rise of the modern world economy as starting around the year 1450 in northwestern Europe.86 The first contractualist economy emerged more than two centuries ago. Since then, contractualist states have confronted numerous shocks and threats to their systems, including the American Civil War, the Great Depression, two world wars, and the Cold War. The present populist mini-wave and pathologies in U.S. democracy are mere trifling episodes in a larger historical frame.

#### No emerging tech impact.

Sechser et al. ‘19 (\*Todd S. Sechser is the Pamela Feinour Edmonds and Franklin S. Edmonds, Jr. Discovery Professor of Politics and Public Policy at the University of Virginia and Senior Fellow at the Miller Center of Public Affairs; \*\*Neil Narang is an Associate Professor of Political Science at the University of California, Santa Barbara; \*\*\*Caitlin Talmadge is Associate Professor of Security Studies in the School of Foreign at Georgetown University; “Emerging technologies and strategic stability in peacetime, crisis, and war”; *Journal of Strategic Studies*, 42:6; pg. 728-729)

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

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

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

## 1NC---Indigenous Regimes

### 1NC---!D---Regimes Adv

#### No internal link to the advantage —

#### 1. Murray -- no evidence the US is applying antitrust in Brazil now -- no evidence it's stopping Brazil's CADE program from being effective

#### 2. Ribeiro -- it's the newest card and says the squo solves -- says sufficient to revive their economy. Also says the brink is a health crisis that is coming to the end.

#### 3. Squo solves flocking of litigants - Brazil is expanding private enforcement now - a balancing test also doesn't change that.

#### No impact to deforestation

Hannah Voak 16, Assistant Ecologist, Nurture Ecology Ltd., 4/22/16, “A world without trees,” <http://www.scienceinschool.org/content/world-without-trees>

There are approximately 3.04 trillion trees on planet Earth (Crowther et al, 2015), covering 31% of the world’s land surfacew1. Today, for Earth day, we’re taking a look at trees.

Around 15 billion trees are cut down each year. So, hypothetically speaking, it would take just over 200 years for the world’s forests to completely disappear. While this scenario is unlikely, what would be the consequences of a tree-free planet? Let’s start with perhaps the most obvious difference – oxygen concentration.

A lack of oxygen?

Oxygen makes up roughly 21% of the Earth’s atmosphere, but you probably know that already. What you might be surprised to find out, however, is that only half of this oxygen is produced through photosynthesis in trees and other plants on land. The other half is produced in oceans, by microscopic marine organisms called phytoplankton. The environment would not be devoid of oxygen if all trees were lost but the oxygen level would be lower. Would it be sufficient for humans to survive? In one year, a mature leafy tree produces as much oxygen as ten people breathe. If phytoplankton provides us with half our required oxygen, at current population levels we could survive on Earth for at least 4000 years before the oxygen store ran empty. However, that’s not considering a number of other factors: increasing population size, for example, would reduce the amount of oxygen available, whilst phytoplankton blooms due to an abundance of carbon dioxide could increase oxygen

[Marked]

levels.

Suffocating smog

Whilst there may be enough oxygen for humans to survive on Earth, at least to begin with, the air we breathe could still be responsible for our demise. Like giant filters, trees help to cut down on pollution levels. Leaves intercept airborne particles and ozone, carbon monoxide, sulfur dioxide and other greenhouse gases are absorbed through the leaves stomata. In 2012, outdoor air pollution was estimated to cause 3.7 million premature deaths worldwidew2. Imagine the impact removing these environmental sieves would have on humankind. Air-pollution masks would become a necessity and bottled ‘clean air’ could come at a premium.

Full of hot air?

Armed with pollution masks, would the climate and temperature still be suitable for us? One important consideration is carbon dioxide. In one year, an acre of mature trees soaks up the same amount of carbon dioxide that we produce by driving the average car 26 000 miles. Since human activities like this increase the normal level of carbon dioxide in the atmosphere, cutting down trees would tip the balance even further, not to mention the enormous amount of stored carbon that would be released from doing so.

Deforestation is already responsible for up to 15% of global greenhouse gas emissions and you might think that an overwhelming increase in carbon dioxide would result in a much warmer planet. However, the relationship between trees and global temperature is much more complicated.

Energy and water fluxes between trees and the atmosphere also play a role and a tree’s colour, for example, can affect the amount of the Sun’s energy that is absorbed or reflected. Studies have shown that Europe’s trees have actually caused a slight increase in regional temperatures since 1750w3, while transpiration from plants in tropical forests cools the surface temperature. Therefore, whether the temperature becomes too hot to handle could depend on many factors, although a recent study concluded that reducing forest size increases average air surface temperatures in all climate zones (Alkama & Cescatti, 2016).

#### AND no warming impact

Ord 20, research fellow at the Future of Humanity Institute at Oxford University, has advised the World Health Organization, the World Bank, the World Economic Forum, and the UK Prime Minister’s Office and Cabinet Office. (Toby, “4. Anthropogenic Risks”, *The Precipice: Existential Risk and the Future of Humanity*, Oxford)

Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases

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. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

# 2NC

## T — Per Se

**“Prohibition” requires ending something, which excludes regulating within rules.**

**Feldman 86**, Member of Procopio's Native American Law practice. (Glenn M., On Appeal from the United States Court of Appeals for the Ninth Circuit, California v. Cabazon Band of Mission Indians, 1986 U.S. S. Ct. Briefs LEXIS 1221, Supreme Court of the United States, 1986, LexisNexis)

In arguing that California's bingo laws are prohibitory rat ther than regulatory, the appeallants have simply misunderstood the fundamental distinction between "prohibition" and "regulation" of conduct. As succinctly put by the Supreme Court of Washington more than 50 years ago, after noting that the prohibition and regulation of the sale of liquor are entirely different things: "To prohibit the liquor traffic implies the putting a stop to its sale as a beverage, to end it fully, completely, and indefinitely." In contrast, regulation "implies that the sale of intoxicating liquor shall go on within the bounds of certain prescribed rules, restrictions, and limitations." Ajax v. Gregory, 32 P.2d 560, 563 (Wash. 1934). Because regulation of conduct involves prescribing limitations, regulation, by definition, necessarily involves some degree of prohibition. Blumenthal v. City of Cheyenne, 186 P.2d 556, 566 (Wyo. 1947). The two concepts, however, are analytically distinct. Therefore, when courts have been faced with statutory schemes similar to California's bingo laws, they have consistently held them to be regulatory and not prohibitory.

#### Their claim that they create guidelines that prohibit in certain circumstances is not a prohibition—creating time, place and manner restrictions on behavior are not restrictions—they establish standards

Adelide Law Rev 64 "Potato Marketing Act - Statutory Interpretation - Ultra Vires - Prohibition as Distinct from Regulation" [1964] AdelLawRw 9; (1964) 2(2) Adelaide Law Review 252 <http://classic.austlii.edu.au/au/journals/AdelLawRw/1964/9.html>

The theoretical extent of the term has been defined in previous cases, allthough actual decision on the validity of any particular measure as a regulation may be difficult, since the distinction which must be drawn between regulation and prohibition is a subtle one, essentially a matter of degree. All regulation involves some measure of prohibition; but where the effect of the prohibition is to preclude the subject-matter of regulation from coming into existence will it be invalid. The authoritative statement of the rule in this context is contained in the judgment of Dixon J. (as he then was) in Su;anhill Corporation v. brad bur^.^ "Prima facie a power to make by-laws regulating a subject matter does not extend to prohibiting it altogether, or subject to a dis cretionary licence or consent. By-laws made under such a power may prescribe time, place, manner and circumstance, and they may impose conditions, but under the prima facie meaning of the word they must stop short of preventing or suppressing the thing or conduct to be regulated."

#### Price gouging.

Woodcock 20, Assistant Professor, University of Kentucky Rosenberg College of Law; Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business & Economics. (Ramsi, 9-23-2020, "Toward a Per Se Rule against Price Gouging", *CPI Antitrust Chronicle*, Accessible at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3710997>)

INTRODUCTION

The antitrust laws in the United States do not prohibit price gouging. But they could.2

Surge pricing — the use of algorithms to charge high prices in response to unexpected surges in demand — could, for example, constitute conduct illegal per se under Section 2 of the Sherman Act.3

Surge pricing is price gouging, in that it exploits the power created by unexpected shortages. As such, surge pricing harms consumers, who are better off as a group if firms simply sell out during a demand surge. But unlike low-tech price gouging, surge pricing also exhibits the element of anticompetitive conduct required for antitrust liability.4 The algorithms used in surge pricing execute much more quickly than can human beings, allowing gouging to kick in sooner in response to unexpected shortages, and therefore reducing the period of time during which the effects of competition in the pre-shortage period carry over into the shortage period to discipline prices. It follows that surge pricing is anticompetitive in effect.

But antitrust could go even further, to ban all price gouging, whether enabled by technology or not, if antitrust would only more fully embrace the spirit of its consumer welfare standard by doing away with the requirement of proof of anticompetitive conduct that today severely limits antitrust’s ability to protect consumers.5 Absent the anticompetitive conduct requirement, antitrust could hold firms liable based solely on proof of market power combined with any act, such as the charging of higher prices, that harms consumers.

Price gouging would be an excellent candidate for condemnation under such an expanded antitrust regime because price gouging is easy to identify, allowing antitrust to sidestep the problem of distinguishing cost-driven price increases from consumer-harmful price increases that otherwise complicates such a regime.6 A coincident increase in demand and price reliably signals price gouging, and price gouging is never cost justified and so always harms consumers. Enforcers would also readily be able to identify the price that the court should enjoin the gouger to charge: that is just the price charged before the firm encountered the increase in demand.

#### Product hopping.

Park 17, JD, Editor-in-Chief, Cardozo Arts & Ent. L.J. Vol. 35. (Justine Amy, "Product Hopping: Antitrust Liability and a Per Se Rule," Cardozo Arts & Entertainment Law Journal 35, No. 3, pg. 766-767, <https://heinonline.org/HOL/P?h=hein.journals/caelj35&i=801>)

B. The Proposal: A Per Se Rule

The key in determining whether a brand-name pharmaceutical company is engaged in anticompetitive behavior lies in analyzing whether there was an element of coercion and restriction of consumer choice, warranting the imposition of a per se illegality rule. Product redesign is anticompetitive if the activity coerces consumers and impedes competition in the market. 180 New York v. Actavis provides the most guidance in the determination of coercion and restriction of consumer choice in pharmaceuticals. 81 The Second Circuit held the combination of introducing a new product while simultaneously withdrawing the older product was anticompetitive because it "went beyond the limits of a patent monopoly."1 82 Unlawful conduct then, is composed of conduct used to acquire a monopoly unlawfully followed by conduct used to maintain that monopoly.' 83 However, courts must be careful not to impede the patenting of actual improvements on existing drugs. 18 4

In applying a per se rule, courts would have to engage in a three-step analysis: (1) was a new "improved" product introduced; (2) was the older product withdrawn from the market prior to generic entry; and (3) was the generic competitor excluded from the market? If all three elements can be proven, then the per se rule would deem the activity unlawful. This per se rule would not require courts to assess the market effects of the behavior or the intentions of the companies who engage in this practice, leaving less room for open-ended questions and a variety of interpretations. Instead, it would lead the courts to apply a clear and coherent rule in a consistent manner.

#### NCAA.

Meese 21, Ball Professor of Law and Co-Director, Center for the Study of Law and Markets, William & Mary Law School. (Alan J., 5-27-2021, “Requiem for a Lightweight: How NCAA Continues to Distort Antitrust Doctrine, *Wake Forest Law Review*, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3854852>)

In particular, the essay demonstrates that NCAA’s sports league exemption from the ordinary per se standard contradicts basic antitrust principles. Moreover, the rationale for the exemption turned partly on the Court’s (correct) assertion that some horizontal restraints can overcome market failures and enhance interbrand competition. Recognition of these potential benefits undermined the Court’s otherwise broad articulation of the per se rule that purportedly created the need for such an exemption in the first place.

Failure to condemn the restraints before it as unlawful per se also distorted the Court’s pronouncements regarding how to conduct rule of reason analysis. For instance, the requirements for establishing a prima facie case should depend upon the nature of redeeming virtues a restraint might produce. However, courts, agencies and scholars have read NCAA as holding that proof that a restraint produces prices exceeding the non-restraint baseline necessarily establishes such a case, even when the restraint may overcome a market failure. Moreover, lower courts, agencies and the Court itself have read NCAA as endorsing a “Quick Look” approach in some rule of reason cases, allowing plaintiffs to bypass any requirement to establish anticompetitive harm. Finally, the Court’s approach to rule of reason analysis lent credence to the dubious assumption that benefits produced by challenged restraints necessarily coexist with harms, bolstering the equally dubious less restrictive alternative test. Hopefully, the Court will take this opportunity in Alston to correct these errors and ensure a more coherent Section 1 jurisprudence that better reflects the teachings of modern economic theory.

#### Employment covenants.

Kovacic 21, Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, Dickson Poon School of Law, King’s College London; Non-Executive Director, United Kingdom Competition and Markets Authority. (William E., 6-14-2021, “The Future Adaptation of the Per Se Rule of Illegality in U.S. Antitrust Law”, *Columbia Business Law Review* (1), pg. 82, <https://journals.library.columbia.edu/index.php/CBLR/article/view/8475>)

D. Rulemaking

The FTC’s authority to promulgate trade regulation rules202 provides another mechanism for adjusting the application of rules of per se illegality. The FTC could draw upon the reassessment proceedings and research programs suggested above,203 along with antitrust agency experience in enforcing section 1 of the Sherman Act, to clarify existing per se principles and adjust the scope of their coverage. For example, the FTC might choose to distill the learning from its proceedings involving employment covenants204 to develop a rule restricting their use, perhaps with proscriptions against the use of such covenants in specific circumstances.

#### 2---link uniqueness---per se is key to it.

Crane 7, Assistant Professor, Benjamin N. Cardozo School of Law, Yeshiva University. (Daniel A., “Rules Versus Standards in Antitrust Adjudication”, 64 Wash. & Lee L. Rev. 49, <https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss1/3>)

In recent years, there has been a marked transition away from rules and toward standards in collaborative conduct cases. This occurred in an obvious way beginning in the 1970s as the Burger and then Rehnquist courts overruled Warren court precedents that had condemned a variety of business agreements as per se illegal. As common business practices such as vertical territorial allocations, 37 maximum resale price setting, 38 expulsions of members from industry associations, 39 and manufacturer acquiescence in a retailer's demand to terminate a competing retailer that was deviating from the manufacturer's MSRP40 went from the per se rule to the rule of reason, the domain of rules shrunk and the domain of standards grew. Significantly, the Court declined the Chicago School's call to move vertical restraints from per se illegality to per se legality. In State Oil, Justice O'Connor-who is also fond of balancing tests in constitutional law 4 -went out of her way to make clear that the Court was not holding "that all vertical maximum price fixing is per se lawful.' 42 Vertical restraints would still require scrutiny, but under the multi-factored rule of reason. The transition from rules to standards did not take place solely due to a juridical shift of particular business practices from one category to another. Instead, the entire judicial rhetoric of antitrust has moved in a more nuanced, standard-based direction over the past few decades. With few exceptions, 43 the courts have stopped creating new categories of per se illegal conduct, even though commercial circumstances and practices evolve over time and litigation frequently explores new areas of commercial behavior. Since the mid-1970s, the Supreme Court seems to have frozen the canon of per se illegal practices, without necessarily pushing all other behavior into rule of reason. Instead, arguably beginning with National Society of Professional Engineers v. FTC'4 in 1978, the Court adopted what later became known as the "quick look" approach. In subsequent cases like NCAA v. Board ofRegents45 and California 46 Dental Ass'n v. FTC, the Court described the quick look approach as involving an initial court determination, based on a "rudimentary understanding of economics, ' , 47 that the practice at issue has obvious anticompetitive effects, which puts the defendant to the burden of immediately putting forth a 48 procompetitive justification for the practice.

## CP — Notice and Comment

#### AND absence of the CP makes the plan unenforceable---decks solvency

Souter 01, former Justice of the Supreme Court, delivering a Supreme Court Opinion. (David, 6-18-2001, "United States v. Mead Corporation, 533 U.S. 218", Published by the Climate Change and Public Health Law Blog @ LSU, <https://biotech.law.lsu.edu/cases/adlaw/mead.htm>)

The Federal Circuit, however, reversed the CIT and held that Customs classification rulings should not get Chevron deference, owing to differences from the regulations at issue in Haggar. Rulings are not preceded by notice and comment as under the Administrative Procedure Act (APA), 5 U. S. C. §553, they "do not carry the force of law and are not, like regulations, intended to clarify the rights and obligations of importers beyond the specific case under review." 185 F. 3d, at 1307. The appeals court thought classification rulings had a weaker Chevron claim even than Internal Revenue Service interpretive rulings, to which that court gives no deference; unlike rulings by the IRS, Customs rulings issue from many locations and need not be published. 185 F. 3d, at 1307-1308.

#### 1---FTC Tradeoff---Enforcement-by-rules conserves agency resources.

Speegle 12, JD candidate, May 2012. (Adam, March 2012, “Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process”, *Michigan Law Review*, Vol. 110, No. 5, pg. 872, <https://www.jstor.org/stable/23216802>)

Another benefit of rulemaking is that it limits FTC enforcement in the standard-setting area, allaying concerns related to the seemingly limitless scope of Section 5. Such concerns have been raised not only by industry but by members of the Commission as well.169 They are based on the fear that FTC actions under an ever-expanding Section 5 could result in backlash from the courts that could diminish the effectiveness of future enforcement actions.170 In bringing patent holdup actions under a rule, the Commission may both alleviate this fear and initiate actions it might not otherwise bring due to worries about judicial reaction and other collateral effects. Moreover, by adopting an enforcement-by-rule approach, the FTC eases its burden at trial in that it need only show that a party violated the rule to prove its prima facie case. This simplified enforcement structure benefits industry and others concerned about expansive use of Section 5, and also benefits the FTC's enforcement efforts against SSO abuse by reducing its burden at trial.

#### AND, it confirms public perception of unaccountable leaders, shredding legitimacy---prior N&C key

Hickman 16, \*Kristin E., Harlan Albert Rogers Professor of Law, University of Minnesota Law School. \*\*Mark Thomson, Law clerk to the Honorable Ed Carnes, United States Court of Appeals for the Eleventh Circuit. (“Open Minds and Harmless Errors: Judicial Review of Postpromulgation Notice and Comment”, 101 Cornell L. Rev. 261, pg. 287-288, Available at: <https://scholarship.law.cornell.edu/clr/vol101/iss2/1>)

There are at least two other clear benefits of denying effect to postpromulgation notice and comment, both having to do with the way the public might perceive postpromulgation notice and comment. As some scholars have argued, citizens might not take seriously the opportunity to offer comments after a rule is in effect, believing that, because an agency has already committed to enforcing a particular rule, submitting comments would just be a waste of time.160 If a substantial portion of the public does not think it worthwhile to submit comments, that undermines the crowdsourcing rational of the notice and comment requirements. Thus, at least insomuch as the public is likely to treat the opportunity for prepromulgation comment more seriously than the opportunity for postpromulgation comment, postpromulgation notice and comment constitute an inadequate substitute for prepromulgation notice and comment.

Analogous reasoning can support an argument that postpromulgation notice and comment do not legitimize regulations to the same extent as prepromulgation notice and comment. To the extent the public is more likely to participate in prepromulgation comment periods—or just more likely to believe that prepromulgation notice and comment incorporate the full spectrum of public views on a rule—notice and comment procedures strengthen the perception that the resulting rules are the product of something resembling a democratic process. This, in turn, minimizes the degree to which the resulting rules are seen as democratically illegitimate.161 By contrast, if the public feels shut out of the regulatory process—as it might with postpromulgation notice and comment—the resulting rules will inevitably be perceived as less the product of a representative process and more the product of bureaucratic fiat.162 Refusing to give effect to postpromulgation notice and comment, then, might make sense from a legitimacy perspective.

#### Decline triggers global war quickly

Diamond 19, PhD in Sociology, professor of Sociology and Political Science at Stanford University (Larry, “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency,” Kindle Edition)

In such a near future, my fellow experts would no longer talk of “democratic erosion.” We would be spiraling downward into a time of democratic despair, recalling Daniel Patrick Moynihan’s grim observation from the 1970s that liberal democracy “is where the world was, not where it is going.” 5 The world pulled out of that downward spiral—but it took new, more purposeful American leadership. The planet was not so lucky in the 1930s, when the global implosion of democracy led to a catastrophic world war, between a rising axis of emboldened dictatorships and a shaken and economically depressed collection of self-doubting democracies. These are the stakes. Expanding democracy—with its liberal norms and constitutional commitments—is a crucial foundation for world peace and security. Knock that away, and our most basic hopes and assumptions will be imperiled. The problem is not just that the ground is slipping. It is that we are perched on a global precipice. That ledge has been gradually giving way for a decade. If the erosion continues, we may well reach a tipping point where democracy goes bankrupt suddenly—plunging the world into depths of oppression and aggression that we have not seen since the end of World War II. As a political scientist, I know that our theories and tools are not nearly good enough to tell us just how close we are getting to that point—until it happens.

#### Democracy key to innovation.

Kroenig 20, Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University. (Matthew, *The Return of Great Power Rivalry: Democracy versus Autocracy from the Ancient World to the U.S. and China*, Oxford University Press)

The United States also retains a healthy lead in military applications of high technology and strategic forces. Washington first deployed stealth technology in the late 1980s, for example. China has been working on stealth technology since that time, and it is still not clear whether it has mastered it. Washington is still the only great power that conducts regular nuclear deterrence patrols with its submarine force; this is a strategic advantage that is sixty years old and counting.

Washington is also exploring new military technologies: hypersonic glide vehicles, directed-energy lasers for missile defense, and other sci-fi-like capabilities. The United States is already incorporating 3D printing into its defense acquisition process, with the potential to produce better products while drastically lowering the defense budget.13 China and Russia are also working in these areas, but history and theory, from the Greek phalanx to thermonuclear weapons, suggest that an open society will likely be the first to develop novel military technologies and the operational concepts to put them to good use.

#### AND climate

Kendall-Taylor 16 – PhD in Political Science @ UCLA, Senior Fellow and Director of the Transatlantic Security Program at the Center for a New American Security (CNAS). She works on national security challenges facing the United States and Europe, focusing on Russia, populism and threats to democracy, and the state of the Transatlantic alliance (Andrea, “How Democracy’s Decline Would Undermine the International Order,” *Center for Strategic and International Studies*, <https://www.csis.org/analysis/how-democracy%E2%80%99s-decline-would-undermine-international-order>)

Although none of these burgeoning relationships has developed into a highly unified partnership, democratic backsliding in these countries has provided a basis for cooperation where it did not previously exist. And while the United States certainly finds common cause with authoritarian partners on specific issues, the depth and reliability of such cooperation is limited. Consequently, further democratic decline could seriously compromise the United States’ ability to form the kinds of deep partnerships that will be required to confront today’s increasingly complex challenges. Global issues such as climate change, migration, and violent extremism demand the coordination and cooperation that democratic backsliding would put in peril. Put simply, the United States is a less effective and influential actor if it loses its ability to rely on its partnerships with other democratic nations.

#### 1---beginning N&C after already settling on a rule is fatal to the process

Yates 18, J.D. 2018, The George Washington University Law School. (James, September 2018, "Good Cause Is Cause for Concern," *George Washington Law Review* 86, No. 5, pg. 1452-1454)

B. Remedies to Address Good Cause Concerns

A failure to follow APA procedures presumptively warrants vacation of the rule. The executive and judiciary branches, however, have employed and analyzed several remedies that serve to justify invocations of good cause. These remedies include postpromulgation N&C, the harmless error doctrine, remand without vacatur, and a system of retrospective rulemaking.

Each of the purported remedies described in this Essay suffers from one common problem: they run the risk of triggering or promoting bias. Once an agency has promulgated a rule, with or without N&C, both the agency and the regulated parties will be discouraged from changing the rule. Whether it be agency bias or industry bias, there are significant risks to our democratic system where agencies are given a second shot at explaining away N&C or justifying an interim final rule postpromulgation. We may be willing to take this risk for rules with minimal societal impacts, but concern for bias is—or should be—enhanced when applied to major rules. Where rules have at least $100 million in consequences, agencies should not be free to skirt the democratizing procedures envisioned by the APA.

1. Postpromulgation N&C

The first of these remedies is postpromulgation N&C, where the agency provides an opportunity for public comment only after the rule is promulgated.9 1 Final rules justified on good cause grounds are often exempted from APA procedures. 92 Interim final rules, for example, are exempted from prepromulgation N&C but subjected to postpromulgation N&C. 93 Interim final rules have become popular for major rules, particularly during the Obama administration. 94

The major concern with interim final rules rests in bias. "Once an agency has publicly staked out a position and given effect to that position, . . . forces like regulatory inertia, status quo bias, confirmation bias, and commitment bias all make it less likely the agency will deviate from its position." 95 This proposition survives even in the face of postpromulgation comments that may call for change. Despite this concern, it is not clear whether postpromulgation N&C renders a good cause regulation unlawful.

Courts are divided on how to treat these rules.9 6 On the one hand, the APA's procedures were created to involve the public early in the rulemaking process, and failure to follow these procedures is fatal to the process.9 7 Treating postpromulgation N&C as a presumptive cure would "make the provisions of [section] 553 virtually unenforceable" because agencies could simply promulgate the rule and rely on postpromulgation procedures. 98 Scholars have also argued that regulated parties may not take postpromulgation N&C seriously if the rule is already in place. 99 Failure to include the public in early stages of the rulemaking process delegitimizes the rule itself. 00

#### The CP requires openness to revision.

Justia 18, legal information database. (Last reviewed: April 2018, "Notice and Comment Process for Agency Rulemaking", https://www.justia.com/administrative-law/rulemaking-writing-agency-regulations/notice-and-comment/)

Response to Public Comments

Agencies must consider all “relevant matter presented” during the comment period, and they must respond in some form to all comments received. They are not, however, required to take any specific action with regard to the rule itself. The publication of the final rule must include analyses of any relevant data or other materials submitted by the public and a justification of the form of the final rule in light of the comments the agency received.

If opposition to the proposed rule is exceptionally large or strident, the agency may decide to make substantial modifications and start the process over by publishing a new notice and opening a new comment period. Otherwise, the agency will publish its final findings along with the rule, which is codified in the Code of Federal Regulations.

#### AND delay.

Wolfman 14, \*Brian, JD, Associate Professor of Law @ Georgetown. \*\*Bradley Girard, Public-interest lawyer @ Americans United for Separation of Church and State (12-3-2014, "Argument analysis: "Interpretive rules," notice-and-comment rule making, and the tougher issues waiting in the wings", *SCOTUSblog*, <https://www.scotusblog.com/2014/12/argument-analysis-interpretive-rules-notice-and-comment-rule-making-and-the-tougher-issues-waiting-in-the-wings/>)

Under the Administrative Procedure Act (APA), federal agency rules can be “legislative” or “interpretive.” A legislative rule, like a statute, is said to bind the public and have the “force of law.” Under the APA, a legislative rule generally cannot be issued without notice and comment, a lengthy process in which an agency publishes a proposed rule and gives the public a chance to comment on it. The agency must give serious consideration to the comments before the rule may be finalized. Public comments sometimes significantly affect the content of legislative rules. The APA provides that when an agency amends a legislative rule, the amendment must go through notice and comment, just like the original rule.

By contrast, an interpretive rule is said only to advise the public of an agency’s view of what a law or regulation means. Supposedly, an interpretive rule does not bind the public or have the force of law. Interpretive rules come in many forms, such as guidance documents, agency manuals, and interpretive bulletins. The APA expressly provides that an interpretive rule need not go through notice and comment. An amendment of an interpretive rule is exempt from the notice-and-comment requirement, just like an original interpretive rule—at least, it seems, according to the APA’s text.

But in a series of cases known collectively as the Paralyzed Veterans doctrine, the D.C. Circuit has held that when an agency issues an interpretive rule that significantly revises an existing interpretive rule, the agency must take the revision through notice-and-comment rulemaking before the revision can take effect. In the case before the Court, in 2006, the Department of Labor (DOL) issued, without notice and comment, an interpretive rule which stated that mortgage-loan officers are not entitled to overtime pay under the Fair Labor Standards Act. In 2010, the DOL changed course and said, again without notice and comment, that mortgage-loan officers are entitled to overtime pay. Applying the Paralyzed Veterans doctrine, the D.C. Circuit below held that the 2010 interpretive rule significantly revised the 2006 interpretive rule and so is invalid because it was issued without notice and comment. One point to keep in mind: The D.C. Circuit assumed that the 2010 DOL rule is an interpretive rule, not a legislative rule.

#### 1---should.

Nieto 9, Judge Henry Nieto, Colorado Court of Appeals. (8-20-2009, People v. Munoz, 240 P.3d 311 Colo. Ct. App. 2009)

"Should" is "used … to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (200(2) Courts [\*\*15] interpreting the word in various contexts have drawn conflicting conclusions, although the weight of authority appears to favor interpreting "should" in an imperative, obligatory sense. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and could not be misunderstood by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [\*\*16] have also found that the word conveys to the jury a sense of duty or obligation and not discretion. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as synonymous with the word "must" and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the same meaning. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [\*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey duty or obligation. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

#### 2---substantial.

Words and Phrases 64 (40W&P 759)

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain: absolute: real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

#### b---‘core antitrust laws’---the CP relies on FTC rulemaking authority enshrined in Section 5 of the FTC Act

**DoJ 7** (“ANTITRUST DIVISION STATEMENT REGARDING THE RELEASE OF THE ANTITRUST MODERNIZATION COMMISSION REPORT”, Department of Justice Press Release, 4/3/2007, <https://www.justice.gov/archive/atr/public/press_releases/2007/222344.htm> , date accessed 9/4/21)

The AMC has made many specific recommendations in its report, and the Division is in the process of reviewing all of them. The Division commends the AMC for its three primary conclusions:

* Free-market competition should remain the touchstone of United States' economic policy. The Commission's conclusion in this regard is a fundamental starting point for policy makers. Over a century of experience has shown that robust competition among businesses, each striving to be increasingly successful, leads to better quality products and services, lower prices, and higher levels of innovation.
* The core antitrust laws—Sherman Act sections 1 and 2 and Clayton Act section 7—and their application by the courts and federal enforcement agencies are sound and appropriately safeguard the competitiveness of the U.S. economy.
* New or different rules are not needed for industries in which innovation, intellectual property, and technological innovation are central features. Unlike some other areas of the law, the core antitrust laws are **general in nature and have been applied to many different industries** to protect free-market competition successfully over a long period of time despite changes in the economy and the increasing pace of technological advancement. One of the great benefits of the Sherman and Clayton Acts is their adaptability to new economic conditions without sacrificing their ability to protect competition.

We look forward to reading the report in depth and considering all of the Commission's recommendations. The Antitrust Division appreciates the service and commitment of the AMC Commissioners.

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## DA — FTC Tradeoff

#### Resources are sufficient for effective health enforcement now

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit)

During my years as an executive in the FTC’s Bureau of Competition and as FTC general counsel, I became quite familiar with FTC antitrust development and policy research applicable to healthcare. In my opinion, the FTC staff possesses the legal tools (with the exception of the nonprofit limitation, discussed earlier) to fully investigate and take action against anticompetitive behavior in this sector. What’s more, the FTC has had an excellent enforcement track record, including in hospital mergers. It currently is addressing a broad range of healthcare-related activity. Existing agency guidance, including the 2020 Vertical Merger Guidelines, provide ample support for appropriate, evidence-based, economically sound enforcement. New general legislation is not needed.

#### Enforcement high, resources key, sustained focus solves consolidation

King 21, John and Marylyn Mayo Chair in Health Law and Professor of Law at the University of Auckland (Jaime, “Stop Playing Health Care Antitrust Whack-A-Mole,” Harvard Bill of Health, <https://blog.petrieflom.law.harvard.edu/2021/05/17/health-care-consolidation-antitrust-enforcement/>)

The time has come to meaningfully address the most significant driver of health care costs in the United States — the consolidation of provider market power. Over the last 30 years, our health care markets have consolidated to the point that nearly 95% of metropolitan areas have highly concentrated hospital markets and nearly 80% have highly concentrated specialist physician markets. Market research has consistently found that increased consolidation leads to higher health care prices (sometimes as much as 40% more). Provider consolidation has also been associated with reductions in quality of care and wages for nurses. In consolidated provider markets, insurance companies often must choose between paying dominant providers supracompetitive rates or exiting the market. Unfortunately, insurers have little incentive to push back against provider rate demands because they have the ability to pass those rate increases directly to employers and individuals, in the form of higher premiums. In turn, employers take premium increases out of employee wages, contributing to the growing disparity between health care price growth and employee wages. As a result, rising health care premiums mean that every year, consumers pay more, but receive less. Dynamic health care antitrust enforcement is an idea whose time has finally come, but addressing the ills of consolidation in America’s health care system will require a comprehensive and multi-faceted approach. We have seen repeatedly how an entity with market power can respond quickly to negate the benefits of unilateral policy approaches, leading to an endless cycle of competition policy whack-a-mole. For instance, in the last decade, as health system merger and acquisition challenges became more successful, joint ventures and affiliations, especially with urgent care centers and private equity firms, became more frequent. Further, COVID-19 has exacerbated the threat of health care consolidation by leaving many independent hospitals and physician groups struggling financially and vulnerable to acquisition. Fortunately, the Biden/Harris administration appears uniquely poised to implement a comprehensive initiative to address health care consolidation. First and foremost, Biden has positioned key personnel with antitrust expertise, often with distinct knowledge of the health care industry, throughout his administration. For instance, the nomination of former California Attorney General Xavier Becerra, who championed health care antitrust efforts in the state, as Secretary of Health and Human Services was an inspired choice and presents a unique opportunity to enhance competition through Medicare policy. Biden’s appointment of Tim Wu to the National Economic Council and nomination of Lina Khan to one of five seats on the Federal Trade Commission (FTC) also signal a strong commitment to strengthening antitrust enforcement writ large. Second, the Biden administration should support recent efforts in Congress to address health care antitrust concerns. Senator Amy Klobuchar (D-MN) recently introduced a bill, the Competition and Antitrust Law Enforcement Reform Act, which introduces sweeping reforms that would expand funding to the Department of Justice (DOJ) and the Federal Trade Commission, strengthen prohibitions against anticompetitive mergers by forbidding mergers that “create an appreciable risk of materially lessening competition,” shift the burden of proof to require merging entities to demonstrate that the merger will not harm competition, and take steps to prevent dominant firms from engaging in anticompetitive conduct. Likewise, Senator Patty Murray’s (D-WA) Lower Health Care Costs Act of 2019 demonstrated a sophisticated understanding of how health care entities can use market power to obscure health care prices and negotiate anticompetitive contract terms, like all-or-nothing bargaining, gag clauses, and anti-steering provisions, and provided solid policy solutions to both issues. Providing support for bills like these will be essential to developing a comprehensive competition strategy. Third, on September 17, 2020, the Federal Trade Commission announced much needed plans to revamp the Merger Retrospective program. The Biden administration should provide substantial funding and resources to reinvigorate this program. Merger retrospectives, like Steven Tenn’s Sutter-Summit retrospective in 2008, have been pivotal and provided the FTC with much needed insight on how hospital mergers have leveraged the market power necessary to increase prices and harm consumer welfare. A newly revamped Merger Retrospective program holds great promise for antitrust enforcement in health care, especially if used to gain insight into whether and how vertical and cross-market health care mergers create anticompetitive harms. While a majority of consolidating transactions in health care include vertical or cross-market acquisitions, federal antitrust enforcement has been absent in this area. Fourth, Congress and the Trump Administration have moved mountains to expand price transparency in health care, which will greatly facilitate research into the effects of different types of health care consolidation and contracting practices on prices. The Biden Administration should stand firm on requiring hospitals, insurers, and self-insured employers to report negotiated health care prices, and dedicate resources to analyze that data to determine both the drivers of health care prices and the effectiveness of public policy initiatives designed to control prices. In addition, the Biden administration should promote transparency in health care consolidation by requiring all health care providers (hospitals, clinics, provider organizations, etc.) to report any material change in ownership to the Department of Health and Human Services and the FTC to allow the agencies to monitor consolidation patterns and look for stealth consolidation. All winds seem to blow in the direction of the Biden Administration taking significant action to address rampant consolidation in health care and its harms. Yet, doing so requires funding and willpower. Funding for the FTC and DOJ has decreased in relative dollars since 2010, despite a near doubling in merger filings. The FTC and DOJ need increased funding to expand their ability to review and challenge anticompetitive transactions and practices by dominant health care entities, revamp and expand the scope of their Merger Retrospective Review program, and provide technical assistance to state antitrust enforcers. Furthermore, the FTC should be granted the authority and requisite funding to challenge anticompetitive behavior by non-profit organizations, as they have developed a significant expertise in health care provider markets. Challenging the existing market dynamics in health care also demands the political will to take on some of the biggest industries in the nation (who make some of the largest lobbying contributions). As we have seen in recent challenges to the practices of dominant health care providers, the battle will be hard-fought. Yet, the alternative — allowing the health care industry to continue to siphon off ever-increasing portions of the economy and wages — is unacceptable and irresponsible. The Biden administration must make every attempt to improve the functioning of health care markets where possible, and implement price regulations in markets where competition has failed. Antitrust enforcement agencies must use the full force of their legal arsenal to restore competition in health care — and this may include breaking up large health systems that exploit their market power. For too long, the notion of “unscrambling the egg,” i.e., unwinding a previously consummated hospital merger, has been a non-starter in enforcement circles. To truly restore some form of competition in many health care markets, antitrust enforcers need to break up large systems, or at least have a credible threat of doing so. The Biden administration has an opportunity to reinvigorate our health care markets, but only if it is willing to adopt a bold, determined, and comprehensive competition strategy.

#### New enforcement priorities trigger a tradeoff from health care

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” <https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit>)

Appropriate federal antitrust and consumer protection enforcement is good for the American economy. It promotes enhanced competition and consumer welfare. Regrettably, however, the effectiveness of federal enforcement in achieving these benefits is threatened by insufficient resources. As FTC Acting Chair Rebecca Kelly Slaughter explained in her April 20 testimony before the US Senate Committee on Commerce, Science, and Transportation, FTC employment has remained flat despite a growing workload, with merger filings doubling in recent years. Lauren Feiner reports on that testimony: “The absence of resources means that our enforcement decisions are harder,” [Slaughter] said. “If we think that we have a real case, a real law violation in front of us, but a settlement on the table that is maybe OK but doesn’t get the job done, we have to make difficult decisions about whether it’s worth spending a lot of taxpayer dollars to go sue the companies who are going to come in with many, many law firms worth of attorneys and expensive economic experts, versus taking that settlement.” I can attest to the accuracy of Slaughter’s observation, based on my experience as FTC general counsel in the Trump Administration. During my tenure, the FTC did indeed have to contend with resource limitations that adversely affected merger enforcement decision-making. The problem of resource constraints is particularly acute in the case of healthcare merger reviews, given the increasing consolidation of healthcare institutions. As one noted healthcare scholar stated in 2019, “The Affordable Care Act did not start the consolidation rapidly occurring with hospitals/health systems and medical groups, but it most definitely accelerated the movement to combine. In the last five years, the number and size of consolidations have been at an all-time high.”

#### Antitrust enforcers are drawing from other areas to challenge health care mergers now. The plan flips that strategy on its head.

Baer 20, Visiting Fellow, Governance Studies, The Brookings Institution (Bill, “Before the United States House Committee on the Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law,” <https://www.brookings.edu/wp-content/uploads/2020/05/Bill-Baer-5.19.20-Submission-to-Subcommittee-on-Antitrust-Commercial-and-Administrative-Law-of-the-House-Judiciary-Committee.pdf>)

The dollars and resources need to be increased for a number of reasons. First, as I have discussed, the courts today place a high burden on the government to prove an antitrust violation. That means the enforcers need to devote significant resources to investigating and proving their cases, including extensive document reviews, witness interviews and depositions and expert opinion – industrial organization economists and others. It is time-consuming; it is expensive; and it is resource-intensive. As an example in 2016 the Antitrust Division challenged two proposed mergers that would have dramatically consolidated the health insurance industry: Anthem’s proposed acquisition of Cigna and Aetna’s effort to acquire Humana.13 We successfully persuaded the courts to enjoin both deals, but to get there required the commitment of 25 to 30% of the Division’s professional staff. My colleagues in the FTC’s Bureau of Competition were similarly constrained as they litigated in multiple forums during that same time. That inevitably meant other matters were understaffed. That is no way to ensure adequate enforcement.

#### The plan requires significant resources---that trades off with other areas

DOJ 15 (COMPETITION AND MONOPOLY: SINGLE-FIRM CONDUCT UNDER SECTION 2 OF THE SHERMAN ACT : CHAPTER 9, originally published in 2008, updated in 2015, https://www.justice.gov/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-9)

The rapid changes and innovation typical of new-economy industries raise the question whether current antitrust enforcement mechanisms, which often involve lengthy investigation, followed by complex, time-consuming trials, are suitable for implementing effective remedies that adequately protect competition. Developing an equitable remedy in these markets has been likened to "trying to shoe a galloping horse."(116) One panelist observed that "the system seems broken in terms of speed, cost, and effectiveness of remedies."(117) Professor Hovenkamp explained the problem in the context of the Microsoft litigation: "[T]he legal wheels turn far too slowly. By the time each round of Microsoft litigation had produced a 'cure,' the victim was already dead."(118) Similar criticisms were directed to the long-running litigation against IBM. A panelist concluded that the IBM case highlights the "need for speed" and demonstrates "how the industry and the technology tend to change in a manner that by the time you are done, everything you thought when you started the case is irrelevant."(119) The time required for litigation may present particularly acute concerns in new-economy industries because in many instances, if anticompetitive conduct has eliminated potential competitors, the opportunity for robust competition may be difficult to recreate. As one panelist explained, in fast-moving, high-technology markets, "it's extremely difficult to resuscitate a competitor, after the competitor has been crushed. The convergence of factors that produced a competitive challenge before it was anticompetitively excluded[] may never re-appear, not in the same fashion, anyway."(120) To be sure, antitrust litigation ideally would be more rapid, reaching resolution and a remedy before the markets change significantly. In some cases, this issue can be addressed by consent decrees entered into before litigation; in others, it may suggest seeking preliminary injunctive relief. More generally, the effort to develop clear, objective standards for liability discussed in chapters 1-8 can help address this concern. The clearer and more objective the standard for liability, the more efficient and effective the antitrust enforcement. Violations are more likely to be deterred, litigation is likely to be faster and less expensive, and parties are more likely to reach prompt and effective settlements. Once an appropriate judgment has been issued, steps can be taken to ensure the efficacy of relief in dynamic industries. One possibility is to fashion remedies that go beyond the precise conduct at issue. For example, some panelists suggested that, before the Microsoft litigation ended, "the browser wars were over."(121) For that reason, the remedies at least partially focused on protecting competition that might arise through future middleware technologies. Of course, even when an industry's dynamic nature makes effective injunctive relief problematic, antitrust enforcement continues to play an important role. Thus, the Microsoft court recognized that, while the passage of time in fast-changing settings threatens enormous practical difficulties for courts considering the appropriate measure of relief . . . . [e]ven in those cases where forward-looking remedies appear limited, the Government will continue to have an interest in defining the contours of the antitrust laws so that law-abiding firms will have a clear sense of what is permissible and what is not."(122) The same potential for dynamic change between complaint and judgment that complicates crafting a remedy in the first place raises further complexity after a remedy is in place. Panelists warned that when technology is changing rapidly, a fixed remedy running years into the future may have damaging, unintended consequences.(123) Panelists' general admonitions that decrees should provide adequate flexibility(124) and should run no longer than necessary for re-establishing the opportunity for competition are therefore particularly applicable to cases in technologically dynamic settings.(125) V. Monetary Remedies The antitrust-remedial system in the United States is not limited to conduct and structural remedies. There are also a variety of monetary remedies available that can both deter future anticompetitive conduct and help restore injured parties to the position they would have been in without the unlawful conduct. Private plaintiffs in antitrust cases can seek monetary damages, which by law are trebled automatically.(126) Similarly, the federal government may seek treble damages in instances in which anticompetitive conduct harmed the United States itself,(127) and the states may recover damages they suffered themselves as well as on behalf of injured citizens in their parens patriae capacity.(128) In addition, certain monetary equitable remedies, such as disgorgement and restitution, may be available.(129) The antitrust enforcement agencies, however, do not have the authority to impose civil fines. Private Monetary Remedies--Treble Damages The U.S. antitrust laws permit private plaintiffs to recover three times the damages they prove they have suffered. Although treble damages can increase deterrence and overall enforcement, a number of observers argue that, in the section 2 context, treble damages also can chill procompetitive conduct and that the rationale for trebling is weaker here than in other contexts. As explained below, these concerns have led to questions about the appropriateness of treble damages in private section 2 cases. A successful plaintiff in a section 2 case is entitled to recover "threefold the damages by him sustained."(130) Plaintiffs also may recover attorneys' fees and, in limited circumstances, pre-judgment interest.(131) These private monetary remedies provide incentives for private enforcement and advance at least three important goals: deterrence, punishment of wrongdoers, and compensation of victims.(132) Trebling damages generally increases deterrence by compensating for the possibility that anticompetitive conduct will not be detected and prosecuted.(133) Likewise, the possibility of winning multiple damages enhances plaintiffs' incentives to seek out and detect anticompetitive conduct and to bear the time, expense, and uncertainty of bringing suit.(134) The Department believes that private actions and resulting monetary remedies play an important role in overall antitrust enforcement. The government has finite resources to prosecute antitrust violations; private enforcement supplements these efforts. Indeed, private plaintiffs, rather than the government, undertake a significant portion of antitrust enforcement, including section 2 enforcement.(135) Moreover, by deterring violations, private damages can reduce the need for government enforcement in the first instance.

## Adv — Regimes

#### Finishing Ord

Ord 20, research fellow at the Future of Humanity Institute at Oxford University, has advised the World Health Organization, the World Bank, the World Economic Forum, and the UK Prime Minister’s Office and Cabinet Office. (Toby, “4. Anthropogenic Risks”, *The Precipice: Existential Risk and the Future of Humanity*, Oxford)

Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases

. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.