# 1NC

## 1NC — Off

### 1NC — T

#### Expand requires a “change in the law”

Hatter 90 (HATTER, District Judge. Opinion in In re Eastport Associates, 114 BR 686 - Dist. Court, CD California 1990. Google scholar caselaw. Date accessed 7/12/21)

Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal.App.3d 202, 211, 221 Cal.Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "[t]he bill would expand the definition of development moratorium." Senate Bill 186, Stats.1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App.3d 15, 22, 239 Cal.Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### That’s change must be a material modification of the language of the statute

Iowa Supreme Court 4 (CADY, Justice. Opinion in State v. Truesdell, 679 NW 2d 611 - Iowa: Supreme Court 2004. Google scholar caselaw, date accessed 9/13/21)

Generally, a material modification of the language of a statute gives rise to "a presumption that a change in the law was intended." Midwest Auto. III, LLC v. Iowa Dep't of Transp., 646 N.W.2d 417, 425 (Iowa 2002); see 1A Norman J. Singer, Statutes and Statutory Construction § 22.1, at 240-41 (6th ed.2002). The existence of this presumption is enhanced "when the amendment follows a contrary... judicial interpretation of an unambiguous statute." Midwest Auto. III, LLC, 646 N.W.2d at 425.

#### Antitrust laws are statutes

Kalbfleisch 61(KALBFLEISCH, District Judge. Opinion in Paul M. Harrod Company v. AB Dick Company, 194 F. Supp. 502 - Dist. Court, ND Ohio 1961. Google scholar caselaw, date accessed 9/11/21)

Defendant asserts that the term "antitrust laws," as used in the above section and as defined in 15 U.S.C.A. § 12, does not include a judgment or decree entered in connection with an antitrust case filed by the Government. Plaintiff, on the other hand, asserts that "the violation of the earlier decree of this court in itself gives rise to an independent cause of action under Section 4 of the Clayton Act." 15 U.S.C.A. § 15. Plaintiff's Brief, p. 7. Plaintiff concedes that "as far as he has been able to ascertain, this contention raises issues which have never before been decided by any appellate court." Plaintiff's Brief, p. 5.

In Nashville Milk Co. v. Carnation Co., 1958, 355 U.S. 373, 78 S.Ct. 352, 2 L.Ed. 2d 340, the Supreme Court held that the Robinson-Patman Act, 15 U.S.C.A. §§ 13-13b, 21a, was not included among the "antitrust laws" defined in Section 1 of the Clayton Act (15 U.S.C.A. § 12) and that "the definition contained in § 1 of the Clayton Act is exclusive." Id., 355 U. S. at page 376, 78 S.Ct. at page 354.

The definition of "antitrust laws" in 15 U.S.C.A. § 12, clearly embraces only the statutes described therein. Even without such a definition the term "antitrust laws" could not be construed as pertaining to a judgment or decree entered by a court in connection with an antitrust case filed by the Government. Such decrees do not necessarily reflect the prohibitions of the antitrust laws but may, by their terms, seek to dissipate the effects of the past conduct of the parties and, to this end, frequently enjoin performance of acts lawful in themselves. To permit a private party to recover damages for violation of any provision of such a decree is so obviously beyond the scope of the term "antitrust laws," as used in the statute, as to require no further discussion.

#### Violation---the aff isn’t Congress.

#### VOTE NEG:

#### First---Ground---Congressional change guarantees core DAs like horse-trading and politics, and have link uniqueness because of decades of Congressional inertia.

#### Second---Functional Limits---forces aff to have a comparative solvency advocate, which constrains aff choice. It’s try-or-die for an agential constraint because the topic is bidirectional and unlimited.

### 1NC — CP

#### The United States federal government should create a special investigator office in the United States Department of Agriculture charged with promoting market competition.

#### That enables the USDA to promulgate effective regulations to promote market competition---the function is identical to antitrust.

Ryan McCrimmon 21, agriculture reporter for Politico, 6/11/2021, “Senators seek USDA special investigator after meatpacking disruptions,” https://www.politico.com/news/2021/06/11/usda-special-investigator-meatpacking-disruptions-493320

Senior farm-state senators are pushing to designate a special investigator at the Agriculture Department to focus on antitrust issues and national security concerns in the meatpacking industry, POLITICO has learned.

The effort stems from the recent ransomware cyberattack against JBS, the world’s largest meat packer, which controls almost a quarter of U.S. beef processing. The shutdown of the company’s U.S. plants last week reignited bipartisan calls for the government to chip away at consolidation in the industry, after a series of disruptions since 2019 that have caused sharp swings in the livestock and meat markets.

Sens. Jon Tester (D-Mont.) and Chuck Grassley (R-Iowa) are filing legislation on Thursday that would create a “special investigator for competition matters” within USDA’s Packers and Stockyards Division. That’s the department’s primary unit in charge of monitoring the meat processing sector for unfair trade practices and monopolistic behavior that can harm producers and consumers.

“It’s really to put some teeth in the Packers and Stockyards Act,” Tester said in a telephone interview, referring to the decadesold antitrust law governing meat and poultry firms. “It will give them subpoena power and the ability to address what I believe are anti-competitive prices by meat packers.”

Retail meat prices have remained high since the pandemic started, because of heavy demand and limited slaughterhouse capacity. But most livestock producers didn’t benefit even as large processing companies were raking in profits.

The new USDA office would include a team of investigators tasked with enforcing antitrust laws in coordination with the Justice Department and Federal Trade Commission.

“This special investigator isn’t about saying, ‘You guys are crooked and we’re going to shut you down,’” Tester said. “It’s about making sure they’re living by the laws that are on the books right now. I don’t think they’re being enforced.”

He pointed as a sign of “nefarious behavior” to recent antitrust actions against top meat packers, such as the $108 million criminal fine paid by JBS subsidiary Pilgrim’s Pride after the poultry processing giant pleaded guilty to fixing prices and rigging bids for broiler chicken products.

JBS separately agreed in March to pay $20 million to settle claims by consumers that the company conspired with competitors to inflate pork prices.

The North American Meat Institute, which represents meat packers, argues that livestock prices are following natural supply and demand factors, such as labor constraints that were exacerbated by the pandemic.

“There are new facilities coming online now that have the same problem as existing packing facilities: a labor shortage,” Sarah Little, a spokesperson for the group, said in an email. “The capacity is not being utilized as fully as packers and producers would like. Drought and higher prices for feed have come together with labor shortages to lower cattle prices for producers.”

Sen. Mike Rounds (R-S.D.) is also cosponsoring the bill, and Tester said he’s spoken to several other senators in both parties about signing on.

The special investigator sought by Tester and Grassley would also serve as a bridge to the Department of Homeland Security on national security threats to the food system.

The JBS hack caused wholesale beef prices to immediately tick higher in the days after the plant closures — highlighting the [vulnerability of a food system](https://www.politico.com/news/2021/06/05/how-ransomware-hackers-came-for-americans-beef-491936) that depends on a small group of dominant companies. The beef facilities were back online within days, but market analysts said that a longer-lasting disruption would have a more drastic impact on consumer prices.

USDA is launching its own effort to bolster the food system, in part by helping small and midsize processors gain a foothold in the industry. Secretary Tom Vilsack has also vowed to reconsider new Packers and Stockyards regulations to improve fairness and transparency in livestock markets.

“There were a number of rules that were pending during the Trump administration that are being reviewed, and there were a number of rules promulgated at the end of the Obama administration that deserve a refresh and a re-look,” Vilsack told reporters on a conference call earlier this week. “The expectation would be over the course of the next several months that we will do just that.”

### 1NC — DA

#### Status quo cooperation coming now is necessary to prevent runaway global warming

Balmer 20 Paul Balmer is an associate in Tonkon Torp’s Litigation Department. He graduated from the University of California, Berkeley, School of Law in 2020, where he was the Senior Articles Editor of Ecology Law Quarterly and Treasurer of the Election Law Society, ARTICLE: COLLUDING TO SAVE THE WORLD: HOW ANTITRUST LAWS DISCOURAGE CORPORATIONS FROM TAKING ACTION ON CLIMATE CHANGE, 47 Ecology L. Currents 219 Export Citation 2020 Reporter 47 Ecology L. Currents 219 \*

When President Trump announced his intentions to formally withdraw the United States from the Paris Climate Accord, dozens of major companies stepped into the breach, promising to still work toward meeting the Paris emissions [\*221] targets. 5 Such a position--business leaders joining concerted international action in rebuke of a sitting President--was once unprecedented. Milton Friedman, the influential architect of free market economic theory, warned that business leaders should not act as "unwitting puppets of the intellectual forces" that promote desirable social ends, such as pollution reduction. 6Corporate executives were supposed to ignore "the catchwords of the contemporary crop of reformers" and instead focus on "mak[ing] as much money as possible." 7This shareholder profit paradigm persisted for decades, fueling the conditions that led to the Great Recession 8and even making for-profit companies liable for not putting shareholder profits above all else. 9But now that obligation is changing, and not a moment too soon. By the time the Business Roundtable, an association of major company executives, formally acknowledged that corporate purpose needed to consider benefits to communities and employees in addition to shareholders, 10 the writing had been on the wall for quite some time. Corporations were speaking up in previously unexpected ways and focusing on more than just profit, encouraged by major voices in the business community. 11For example, major tech companies leapt into action when Indiana passed a 2015 bill widely seen as discriminatory against LGBT persons, denouncing the law and threatening boycotts of the state. 12The cloud-computing giant Salesforce, which had between 2,000 and 3,000 employees in Indiana, 13exerted significant leverage in forcing an amendment to the law by cancelling all company programs in and travel to Indiana. 14More corporate boycotts greeted North Carolina and Georgia [\*222] when they passed similar anti-LGBT legislation. 15Additionally, in the wake of recent mass shootings, Dick's Sporting Goods 16and Walmart 17cut back sales of certain firearms and ammunition, arguably doing more in a single decision to address the gun violence epidemic than Congress has been able to do in decades. 18 The growth of corporate activism can be traced to broader societal changes, such as the increased connectivity of people and markets in the Internet age. 19At the same time, governmental gridlock and increasing political polarization have undermined the capacity of government institutions to function efficiently and greatly weakened public trust in government. 20 Corporations are filling this gap as traditional government services become increasingly privatized. 21The growing corporate role in society has fed on itself, with increased stakes and visibility of corporate activism resulting in outsized political power and legal rights. Corporate-associated spending on politics has reached unprecedented, jaw-dropping levels. 22 It is increasingly clear that America cannot address the existential reality of climate change without corporate buy-in, if not corporate leadership. It is beyond the scope of this Article to discuss the extent of the climate crisis or the necessary corporate response; it is enough to say that each passing week brings bad news about the extent of already irreversible damage from climate change. 23 While the future costs of climate change will be immense, the costs of acting now to limit warming to habitable levels are also significant, on the measure of $ 3.5 trillion a year. 24While governments around the world are expected to lead the necessary spending, a large portion of those costs will inevitably fall on [\*223] companies, either through direct taxes like a carbon tax or increased costs of compliance, such as ending reliance on coal. 25Even as global governmental efforts falter, 26 corporations are committing to act, both together 27 and independently. 28The high costs of corporate climate engagement, both to the companies themselves and to our society, 29have to be worth the last best chance to mitigate catastrophic climate change.

#### BUT perceptions of new unpredictable, antitrust prohibition will crush cooperation essential to stop runaway climate

ICC 20 International Chamber of Commerce, COMPETITION POLICY AND ENVIRONMENTAL SUSTAINABILITY1 26 November, 2020, https://iccwbo.org/content/uploads/sites/3/2020/12/2020-comppolicyandenvironmsustainnability.pdf

The solution to sustainability “collective action” problems is appropriate coordination.10 Coordination may be most efficient if in the form of environmental (or social) regulations, carbon emissions taxes, emission rights trading systems, rules for responsible sourcing and support for innovation including permanent extraction of carbon from the atmosphere. The problem is that regulation and taxation are often politically controversial, uncoordinated amongst governments, delayed, inadequate, or ineffective. For instance, environmental taxes are less than the net present social costs of pollution, and emission rights trading systems for the time being exist only in a limited number of jurisdictions, cover only a small portion of the economy, and are traded at a price well below the social cost of carbon. 3.2. In this light, if we want to have a chance to limit the temperature increase to 1.5 degrees Celsius above the pre-industrial level (as per the objective at the United Nations Framework Convention on Climate Change in 2015 i.e. the Paris Agreement) or to achieve the UN SDGs, the private sector must do its part, and cooperate where appropriate. Many firms will be reluctant to cooperate for fear of running foul of competition law or for fear of restrictive or unpredictable enforcement of competition law.

#### There is no fear now BUT that is predicated off of the federal judiciary consistently and predictably reducing antitrust prohibition now

Crane 21 Daniel A. Crane Frederick Paul Furth, Sr. Professor of Law, University of Michigan 1-28-2021 Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021) https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr

In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton Act, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute. If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital.

#### Warming causes extinction — it’s a conflict multiplier.

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

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose existential risks. This is because of intrinsic positive feedback loops, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield surprises. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of food and water, and shortages of food and water can create conflict and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to exacerbate drought and water scarcity, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases storm frequency and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, coastal communities will be exposed to unprecedented storm surge—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare extreme events because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have adapted to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, the Earth’s climate system is rife with positive feedback loops. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could catch humanity off-guard and produce a true apocalyptic event. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that runaway climate change, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends even greater existential risks. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

### 1NC — T

**Prohibition requires forbidding a practice, that’s distinct from a mere 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).

#### Violation—the aff is a presumption

Ahrens 2k (Deborah Ahrens-J.D., magna cum laude, New York University School of Law, 2000. NOTE:NOT IN FRONT OF THE CHILDREN: PROHIBITION ON CHILD CUSTODY AS CIVIL BRANDING FOR CRIMINAL ACTIVITY, 75 N.Y.U.L. Rev. 737, 764-765, June, 2000, Lexis, accessed via KU libraries, date accessed 12/22/21)

Statutes enacted in Arkansas, California, and Washington seem facially less troublesome; these statutes only affect the ability of persons convicted of sexual offenses against children to live in homes with children, and the Arkansas and Washington statutes only affect [\*765] convicted persons during the period of their probation. 128 Further, these statutes are presumptions against custody, in contrast with the Alabama statute's absolute prohibition (although the requirements to overcome these presumptions can be substantial). 129 Some aspects of these statutes, however, are actually tougher on released persons; in particular, none of these states makes exception for the person's own children. 130 California's statute, further, was amended in 1998 to create a presumption, not only against physical custody for persons convicted of sexual offenses, but against any legal custody, including visitation. 131

#### Vote Neg:

#### 1. Limits—there are infinite ways to tinker incrementally absent prohibition

#### 2. Ground—only forbidding a practice guarantees the neg link uniqueness for core DAs

## 1NC — Solvency

### 1NC — AT: Solvency

#### Next is solvency—notice how they didn’t have one of these—hold the 2AC to responding to these — all of these are reasons to vote negative on presumption

#### 1. They don’t solve ag mergers

#### a. consolidation has happened—their impacts are about the problems with consolidated ag in the squo—the aff isn’t reverse causal: it doesn’t break up corporations

#### b. The aff doesn’t mandate an interpretation that includes *threat of loss of profits*—that’s key

1AC Tam and Bielskis 21, Kristen, BA, Environmental Science Policy, University of California, Los Angeles, Olivia, BA, Political Science & Human Biology and Society, University of California, Los Angeles, "Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement," 2021-04-01, <https://escholarship.org/uc/item/0m16g2r5>

IV. Recommendations

In order to uphold competition in the marketplace, the Courts and federal regulation agencies must take deliberate action against mergers that will inevitably have profound effects on long-term competition. In order to address prong one, where the Courts have not erred on the side of precaution and have not granted antitrust injury to parties that claim “the threat of loss of profits due to possible price competition,” the Courts should interpret American antitrust laws with Congress’s intent to protect competition, rather than through the lens of consumer welfare, a strategy that has failed to uphold empirical integrity, seeing as consumer prices have risen.110 Specifically, they should interpret Section 16 of the Clayton Act to allow for antitrust injury to include the threat of loss of profits due to possible price competition following a merger. Not only will this rightfully decrease the barrier to bringing forth an antitrust injury, but it will bring precedent back into alignment with the purpose and intention of the Clayton Act and prevent further consolidation in the agriculture marketplace.

#### c. “presumption”—the plan doesn’t make mergers impossible, just harder

#### d. corporate financing—(KU YELOW)

Merkle et al 21 (Magnus Merkle, School, l of Geosciences, The University of Edinburgh, Institute of Geography, Dominic Moran, Global Academy of Agriculture and Food Security, University of Edinburgh, Frances Warren, School of Geosciences, The University of Edinburgh, Peter Alexander, School of Geosciences, The University of Edinburgh, “How does market power affect the resilience of food supply”, Global Food Security, Vol. 30, September) DB

Food systems are characterised by vertically integrated and increasingly global commodity supply chains. In such systems, regional shocks can quickly cross geographies, causing price spikes and shortages for consumers. Shocks can be caused by a wide range of events, including extreme weather, unsustainable agricultural practices, political crises affecting trade, and pandemics (Bailey et al., 2015; Bakalis et al., 2020; Hamilton et al., 2020). Supply chain configuration can mitigate or exacerbate the associated risks to food supplies. Systems that are resilient have the capacity to maintain food supply in spite of unforeseen disturbances (Tendall et al., 2015). One characteristic of global food supply chains is the concentration of market power, which can emerge from consolidation through mergers and acquisitions assisted by the availability of alternative forms of corporate financing. Power imbalances are manifest in many food supply chain relations (ETC Group, 2015; Hendrickson, 2015; iPES Food, 2017; Renwick, 2012; Swinburn, 2019; Woodall and Shannon, 2018), and a split between corporate ownership and control can create tension between consumer and supplier interests, and those of often-remote shareholders. The power and influence of large companies in the food system has been likened to the role of “keystone species” crucial to the function of ecosystems (Österblom et al., 2015). This ecological analogy leads to the examination of the role of such actors in system resilience. More specifically, how their dominant position affords more or less resilience to other actors and to the overall system. While market concentration and elevated power of individual firms is critically framed in some food system literature, there is little systematic understanding of the effects that market power can have on the resilience of food supply. Literature on indicators of food system resilience (Cabell and Oelofse, 2012; Speranza et al., 2014; Tendall et al., 2015) overlooks the role of market power. Economic literature (Bakucs et al., 2014; McCorriston, 2013; Weldegebriel, 2004) focuses on short-term price movements, without considering resilience or wider adaptive capacity. Most studies either only consider one aspect of market power (e.g. Bakucs et al., 2014 considering market concentration), or else offer no explicit definition of market power (e.g. Woodall and Shannon, 2018). Sexton and Xia (2018) are an exception in considering a range of defined aspects of market power, and their potential effects on agricultural supply chains. Building on economic and socio-ecological systems literatures, we consider how market power affects supply chain resilience to external shocks. We also draw on experience from recent food supply shocks in the UK, a country that is considered to be threatened by “inherent systemic risks”, with 50% of its domestic food sales dependent imports (Benton et al., 2017). The UK also has a recent history of government inquiries into alleged anti-competitive market practices (see CMA, 2019). We outline a differentiated conceptualisation of market power for food system resilience research, and speculate on ways to improve the adaptive capacity of food systems. We first derive working definitions of resilience and market power from the literature. The resilience implications of different dimensions of market power is then analysed, using literature from multiple disciplines and cases from the UK. We end with a reflection on regulatory needs. 2. Resilience and market power The focus on the resilience of food supply arises as a desirable attribute of food systems and concern about food security more generally. This is particularly so when food systems are subject to an increasing array of foreseen and unforeseen shocks. Conceptually, resilience has roots in engineering as well as in ecological literature, which focus on the equilibrium of complex systems and the thresholds that define the boundaries of stable and unstable dynamic systems. Although resilience is defined differently by several disciplines (Thorén, 2014), it is commonly viewed in conjunction with the concept of vulnerability (Nelson et al., 2007). An early definition of system resilience is the dynamic ability of systems to persist in a functional way (Holling, 1973), which can also be termed as the capacity “to continue providing a function over time despite disturbances” (Tendall et al., 2015). Helfgott (2018) suggests specifying this function in terms of resilience of what, to what, for whom, and over what time frame. Following this suggestion, the focus of this study is on the resilience of food supply to external shocks for consumers, over the short to medium time frame. A similar focus on food supply is adopted by Tendall et al. (2015), who define food system resilience as. “the capacity over time of a system and its units at multiple levels, to provide sufficient, appropriate and accessible food to all, in the face of various and even unforeseen disturbances”. Food system resilience has been described as the stability dimension of food security (ibid.). It is also possible to frame system resilience from a perspective of environmental sustainability, or producer livelihoods, which imply a different focus and metrics. Resilience at one end of a supply chain does not always imply resilience at the other points in the chain, and it is important to consider conflicts and trade-offs that can appear (Oliver et al., 2018; Zurek et al., 2020). It is also important to consider larger-scale interactions between consumption, production and ecosystem services, which are all part of the same complex socio-ecological system, hierarchically linked through ecological and economic dependencies and systemic feedback loops (Nyström et al., 2019). A persistently stable food supply is thus underpinned by the sustainability of the whole system. Indicators for resilience in socio-ecological systems include capacity buffers, redundancy, flexibility, diversity, and the right balance between cooperation and autonomy (Cabell and Oelofse, 2012; Speranza et al., 2014). Resilience implies a system's capability to deal with change, namely (1) through system persistence, (2) through incremental system adjustments, or (3) through more fundamental transformational change to maintain a system's function (Doherty et al., 2019). These capacities have been reinterpreted as (1) Robustness to resist disruptions, (2) Recovery, the ability to return to a desired state following disruption, and (3) Reorientation, the ability to change to a different state in order to maintain the function despite the disruption (GFS-FSR, 2019). These three capacities can be conflicting, i.e. a highly robust system might lack capacity to change fundamentally and vice versa (Doherty et al., 2019). Market power refers to the influence of a firm (or a group of colluding firms) over its customers or its suppliers, which increases in less competitive markets (White, 2013). Power can be associated with different and sometimes interrelated causes, including (1) market concentration, for example in the current market for smartphone operating systems largely dominated by two firms, (2) cooperation and collusion between firms, for example in case of an oil oligopoly manipulating oil prices, (3) rigid contracts, for example when a supplier is locked into a contract preventing a change of business partners, (4) exclusive rights or unique products, for example when a firm owns an important patent providing it with a unique technology, or when consumers consistently consider a firm's product more desirable than comparable products by other firms; or (5) infrastructure and size, for example when economies of scale have enabled a firm to grow significantly larger than others, preventing rivals from competing in terms of handling capacity and cost advantage. In each case the extent of actual power and anti-competitive practice can be contested because of data challenges that hamper estimation (Sexton and Xia, 2018; Swinnen and Vandeplas, 2010), and the fact that market concentration indicators are not always indicative of market power (Adajar et al., 2019). Power can be deployed subtly and is difficult to measure as it does not always manifest in the same way. Firms can exercise power for different objectives, including the maintenance of supernormal profits, which is often considered socially detrimental in terms of consumer and producer welfare relative to perfectly competitive markets. In practice, power can enable a variety of outcomes that are tied to questions of accountability, agency, and contracts. In some cases, market power can enable higher levels of consumer welfare (Williamson, 1968). 3. Resilience implications of market power 3.1. Market concentration and vulnerability Market concentration can increase the power of individual firms, as suppliers and customers have fewer alternative firms to do business with. Concentrated markets in the food system include the global agricultural inputs market, where Bayer-Monsanto, Dow-Dupont, ChemChina-Syngenta, and BASF control 70% of the market (DeCarlo, 2018), or the UK retail market, where Tesco, Sainsbury's, Asda, and Morrisons control 67% of the market (KANTAR, 2020). In earlier studies, market concentration has been related to low levels of diversity and redundancy, and thus vulnerability to shocks (e.g. Hendrickson, 2015; Rotz and Fraser, 2015). The rationale is that a disruption hitting one dominant firm, will have more severe consequences for the food system, and low firm diversity is therefore expected to lead to systemic vulnerability. Market concentration at some levels can nevertheless coexist with system (functional) diversity elsewhere. A concentrated retail market, for example, is not necessarily vulnerable to supply disruptions if its upstream supply base remains diversified. Furthermore, a firm can have numerous subsidiaries, contractors, regionally distributed business locations, and functionally independent divisions and operations. Drucker (2010) makes an important distinction in emphasising the difference between economic diversity as “variety of heterogeneous activities comprising an economy at a specific time”, and industrial concentration as “the extent to which the economic activity of an industry or industrial sector is accounted for by one or a few large firms”. Garmestani et al. (2006) highlight that functional richness and functional diversity are central attributes of resilience and these do not necessarily correlate with market concentration. Vulnerability to shocks is associated with homogenous processes that are not robust, have low capacity of recovery, or for reorientation. A lack of diversity on a functional level can impair redundancy and therefore impair resilience (Cabell and Oelofse, 2012). Accordingly, food system resilience assessments need to specifically consider diversity at the functional level rather than only at the level of the market. 3.2. Firm size: a trade-off between infrastructure and flexibility? Power concentrated in fewer larger firms can often imply larger infrastructure and varying flexibility to address shocks. The last UK food security assessment noted that large conglomerates such as Cargill, Archer Daniels Midland and ConAgra help to safeguard supply by managing contracts and providing knowledge, capital, and infrastructure (DEFRA, 2010). This suggests that economies of scale, itself conducive to market power, can be beneficial for the resilience of food supply in terms of providing ability to handle bulk (Garmestani et al., 2006). Size might also be an asset in case of a regional crisis, when access to global infrastructure and strong logistics enable a firm to divert supply between production regions. In contrast, some have argued that large organisational structures can reduce the reactive flexibility to a shock, compared to smaller more diverse actors that are more flexible and reactive when conditions change (Garmestani et al., 2006; Hendrickson, 2015). When the hospitality sector was closed during the Covid-19 pandemic, for example, several small farms swiftly redesigned their business model to supply directly to consumers (Farming UK, 2020). Socio-ecological systems literature considers flexibility as a central prerequisite to be able to deal with changes (Nelson et al., 2007). Size can therefore imply a resilience trade-off between infrastructure and flexibility. Garmestani et al. (2006) suggest that industries with firms of varying sizes (i.e. some are big and some are small) might be the most resilient as they combine both capacities. 3.3. Conflicts between efficiency and resilience Economic theory suggests that reduced competition leads to lower production levels, economic efficiency and welfare, because the profit-maximising quantity in a non-competitive market is lower than in a competitive setting (White, 2013). However, when considering resource extraction and external costs, a less competitive “slower race” might enable more sustainable practices (Crona et al., 2016). Natural resource literature has shown that resource exploitation rates can be lower when competition is reduced (Solow, 1974; Stiglitz, 1976). When it comes to resource depletion and external costs, the advantages of imperfect competition may therefore offset its disadvantages. A similar efficiency vs. resilience trade-off is evident along supply chains. Efficiency, as defined in a competitive market, implies that slack or redundancy is minimal. Capital and other resources are fully employed, leaving little leeway to buffer disruptions. However, the ability to mitigate a shock impact requires some form of leeway, for example financial capacity to offset price fluctuations caused by a disruption in production. If this capacity to mitigate shock impacts results from additional profit margins due to market power, the higher prices for consumers or lower prices for producers could be considered as a resilience ‘insurance premium’ at the expense of sector efficiency. Price-buffering behaviour happens in the potash industry, where the dominant legal cartel has been able to maintain price stability despite frequent supply shocks (Gnutzmann et al., 2019). An illustrative case in the UK food system was the weather-induced Southern European vegetable shortage in 2017, where financial capacity enabled packers and retailers in the UK to maintain the supply of lettuce to consumers by contracting American producers at higher freighting costs (BBC Radio 4, 2018). However, as shown by price transmission research (Lloyd, 2017), a firm may not automatically make use of this buffering ability. McCorriston et al. (2001) as well as Weldegabriel (2004) analysed whether elevated profit mark-ups due to market power generally absorb price fluctuations, and concluded that this depends on assumed demand and supply elasticities. Without knowing firm-specific incentives, price transmission models are therefore ambiguous as to whether elevated profit mark-ups increase the resilience of food supply. 3.4. Costs and benefits of power imbalances Market power for any supply chain actor typically comes at the cost of reduced freedom and autonomy for other supply chain actors. If producers are dependent on a powerful buyer, a large part of their decision-making control is passed on to the buyer, who can now dictate rules and conditions for their business relationship. The impact of power imbalance on food system resilience is completely dependent on the powerful firm. Power can enable firms to act as positive change makers, for example, though the promotion of sustainable production practices (Folke et al., 2019; Rueda et al., 2017) or through the promotion of robustness in agricultural landscapes to better be able to withstand shocks (Macfadyen et al., 2015). Powerful retailers can also shape consumer attitudes and inform about environmental issues associated with certain food, in order to incentivise sustainable production and possibly higher resilience of ecosystems (ibid.). However, without accountability for social or environmental consequences, powerful retailers can be detrimental. An example are the North Sea cod crises of 2006 and 2019, where stocks fell below safe biological levels (MSC, 2019). As retailers diverted to Atlantic cod to offset the domestic shortage, consumers remained unaffected and unaware of the acute ecosystem depletion in the North Sea (Crona et al., 2016). Power in the supply chain structure prevented the price signal from signalling scarcity (Crona et al., 2016; Nyström et al., 2019). The cod crisis is an example for how continued supply at the consumer end can coincide with an undermining of resilience at the individual ecosystem and producer level. It can also be framed as an information failure wherein powerful firms fail to a transmit information about ecological impacts and, by extension, to promote ecosystem resilience. Similarly, if powerful firms systematically withhold information, knowledge and technology, they impair the adaptive capacity of other firms (iPES Food, 2017). Power imbalances can create both winners and losers, as they shift vulnerability to where there is least power in the supply chain. The combination of downstream competition (i.e. competition amongst retailers) with upstream buyer power (i.e. power of retailers towards suppliers), for example, may reduce consumer prices and hence be beneficial to ensure consumer access to food (Swinnen and Vandeplas, 2010; Zhao, 2019), but at the expense of producers who may be exploited (iPES Food, 2017). An example was the BSE crisis in 1996, when UK beef exports were stopped, and domestic beef consumption decreased drastically over concern that eating beef could lead to fatal Creutzfeldt-Jacob Disease. Using their buyer power, UK retailers reduced the prices paid to livestock farmers by twice the level of the decrease in retail prices, taking advantage of a shock to make additional profits at the expense of producers (Competition Commission, 2000; Lloyd et al., 2003). Beef producers were made doubly vulnerable due to the combined effects of BSE and their lack of bargaining power. Suggested indicators for agroecosystem resilience include social self-organisation, calibrated connectedness, global autonomy and local independence (Cabell and Oelofse, 2012). Dependencies, in contrast, reduce the ability of individual firms to act according to their own locally specific knowledge to adapt to changed circumstances (Hendrickson, 2015; iPES Food, 2017). If power imbalances imply low autonomy and reduced ability along the supply chain to react to changes, the net impact of power imbalance on resilience of food supply may be negative. 3.5. Competition vs. cooperation Collusion between firms increases their joint power in a market and is usually regulated by competition authorities to control any exploitative behaviour. In a crisis however, cooperation can increase capacity to maintain food supplies to consumers, because infrastructure, resources, logistics, and knowledge can be shared. Cooperation can enhance resilience, as long as cooperating firms face incentives to act in a benign way. Cases showing how cooperation increases both resilience and efficiency have been found in seafood supply (Nyström et al., 2019), pork supply (Leat and Revoredo-Giha, 2013) and UK retailer supply networks (Duffy and Fearne, 2004). The collaboration-competition tension was also illustrated during the Covid-19 pandemic, when the UK government relaxed competition laws allowing retailers to collaborate to address distribution challenges (UK Government, 2020). Concerns about the fine line between cooperation and collusion have nevertheless been raised (BBC, 2020). Sykuta and Cook (2001) observe that ownership structure of a firm can be a factor in the extent of cooperative contracting. If so, then the question of the distribution of power (i.e. who holds the firm) is an important corollary to resilience outcomes. A comparison of investor-owned and producer-owned firms illustrates how cooperative contracting between producers is more efficient than contracting in which distrust between the parties leads to an incentive to withhold information (ibid.). Producer ownership creates accountability towards producers, which can be an incentive to act in a resilience-promoting way. This was illustrated by a case from the UK milk supply chain in winter 2018, when cold weather conditions interrupted logistics and UK dairy farmers were forced to discard thousands of litres of milk that could not be collected (Perrett, 2018; Yates, 2018). Although this milk did not reach supermarkets, big co-operatives such as Arla continued to pay farmers for their production (ibid.). This decision to support producers is an example for producer risk diversification through cooperation, as Arla is owned by 2500 farmers (Perrett, 2018). However, the line between voluntary cooperation based on trust and involuntary cooperation based on coercion is difficult to determine (Dapiran and Hogarth-Scott, 2003), and power imbalances can prevail in cooperative and competitive systems. Regulatory scrutiny may sometimes find this distinction hard to detect. 4. Regulating for resilient food systems Resilience has been assumed as an emergent property of largely self-regulating market structures that comprise the food system in many countries. However, there is no guarantee that self-organisation, shared underlying infrastructures and other information flows between actors configure to generate a socially optimal compromise between lowest possible consumer prices and resilience to exogenous shocks. This includes stability of food supplies, plus consideration of other environmental and health external costs that might reasonably be expected of a system that seeks to promote sustainable production and consumption or a “whole society approach to food” (Lewis, 2020). The dominant food system in the UK is arguably focused predominantly on financial returns to shareholders, an objective that is not always convergent with this broader scope of resilience or transparent stewardship of the natural resource base on which it depends (Clapp and Isakson, 2018). As with the financial system at the time of the global financial crisis of 2007–2008, risk taking – arguably amplified by market power – is largely sanctioned by current regulation on the presumption that internal incentives align with broader social goals, and that the system has an in-built incentive not to fail. This presumption is an article of faith, both untested and risky. Notwithstanding largely coping with the recent stress-test from COVID-19 (Moran et al., 2020), there is nothing intrinsically self-correcting about current systems, which are responsible for a significant burden of national health and environmental externalities (Afshin et al., 2019; Springmann et al., 2018). Some have suggested that voluntary market discipline, corporate responsibility initiatives, and spontaneous collective action by some market participants, could correct detrimental social and environmental impacts. However, this notion has not been proven to be very reliable (Jones and Nisbet, 2011) and there are no market mechanisms to drive corrective actions to market failure. Expecting the delivery of a public good – resilience – by a system in private hands and increasingly concentrated in structure may therefore be hazardous. Regulation is a response to market failure. Current food system regulation largely monitors and controls some aspects of market power and the maintenance of food safety, the latter a credence attribute of food and therefore associated regulation is a public good function. If resilience is a public good, then there is a need for more regulation and research beyond market power and food safety, to understand risks and to untangle the additional elements of responsibility and agency of both private and public sectors with regards to resilience. 5. Conclusion Interest in food system resilience has increased in the wake of several regional and global crises, which have revealed systematic vulnerabilities that can be both amplified and neutralised by the presence of market power in parts of the supply chain. Power relations are not extensively discussed in resilience literature, and resilience is not extensively discussed in economic literature. Efficient markets constituted by profit-seeking actors have no built-in mechanism to deliver resilience. We highlight that some aspects associated with market power, such as infrastructure, financial capacity, and cooperation can be enablers for enhanced resilience in times of crisis. We equally highlight the need to consider how resilience can be jeopardised when the interests of dominant powerful firms are not aligned with societal interests, and when detrimental environmental and social effects are not regulated for. In such circumstances, risk is amplified by power imbalances. The provision of resilience – as a public good attribute of a system that is largely in private hands – potentially calls for wider scope of regulation that scrutinises elements such as functional diversity, flexibility, efficiency/redundancy trade-offs, autonomy, cooperation, agency and the regulation of environmental impacts to make firms accountable. This gets us nearer to whole society approach to food governance, suggested by some commentators.

#### e. narrowed PSA (Packers and Stockyards Act)

1AC Judge and Belkin 2020

[Patty, Iowa Lt. Governor and Iowa Secretary of Agriculture and serves currently as Co-Chair of Focus On Rural America, and Aaron, Director, Take Back the Court, “The Supreme Court Has Undermined Iowa’s Small Farms and Rural Communities”, <https://static1.squarespace.com/static/5ce33e8da6bbec0001ea9543/t/5e28472acbf4145143979997/1579697963585/Supreme+Court+Has+Undermined+Iowa%27s+Small+Farms.pdf>]

We show in this study that courts have not only upheld anticompetitive integration in the meatpacking industry, but have also dismantled the protections afforded to small farmers by the PSA. Three factors, in particular, warrant consideration. First, the PSA was intended to prohibit a monopoly in the meatpacking industry, but courts have held that corporate consolidation is not a violation of the PSA. Second, the clear language of the Act’s broad prohibitions has been reinterpreted by courts to apply only to clearly egregious cases, thus allowing systemic yet subtle anticompetitive behavior to flourish. Finally, courts have failed to properly apply the PSA to contracts between small farmers and large corporations, even when contractual terms expressly violate the Act. Many small farmers have challenged the dismantling of the PSA, but the Supreme Court has, without exception, denied them a hearing, thus ignoring the ways that lower federal courts have reshaped the law to favor agribusiness at the expense of local farms. The decisions of the Supreme Court and lower federal courts have resulted in the consolidation of agricultural industries, leaving small farms and rural communities unprotected from hardship.

#### 2. Even if they do solve ag merger rules, they don’t solve ag coops

Kelloway 20—(\*BA in political science from Carleton College; \*\*JD from Duke University, published in the Berkeley Business Law Journal, Harvard Law & Policy Review, and Nebraska Law Review; \*\*\*JD from Pennsylvania State University). \*Claire Kelloway, \*\*Sandeep Vaheesan, \*\*\*Zachary Burley. September 2020. “Redeeming the Democratic Promise of Agricultural Cooperatives”. Open Markets Institute. https://www.openmarketsinstitute.org/publications/redeeming-the-democratic-promise-of-agricultural-cooperatives. Accessed 6/9/21.

Today, it is still not clear whether mergers between cooperatives are exempt from antitrust review, especially where buyer power over members is concerned.35 At a minimum, Supreme Court decisions have held that co- ops are subject to the Sherman Act's ban on monopolization or attempts to monopolize and that co-ops cannot join forces with non-cooperative entities to engage in restraint of trade.36 However, there’s leeway for non-farming entities to become co-op members and pursue similar ends.

Capper-Volstead contains no clear definition of which individuals or entities are allowed to organize cooperatives as "farmers, planters, ranchmen, dairymen, nut or fruit growers," though there's evidence that legislators did not intend for the law to cover food processors.37 The law is also vague about the rights of members and control over cooperative operations, only stating that cooperatives should be "operated for the mutual benefit of members," and adopt at least one of two principles: Either no members are “allowed more than one vote," or the co-op can "not pay dividends on stock or membership capital in excess of 8 per centum per annum."38

States have varying laws to regulate cooperatives. Similar to corporations, cooperatives are legal business entities chartered under state law. Some states have laws specifically governing agricultural cooperatives, and California even distinguishes among four types of agriculture cooperatives, whereas other states make no distinctions between co-op types and forms. All cooperatives must adopt and ratify legally enforceable bylaws, but only some states enumerate co-op members’ rights and obligations or other requirements for co-op bylaws.39 All cooperatives also must elect a board of directors, but only some states define specific board responsibilities. Oversight and transparency also vary. For instance, Wisconsin’s Department of Agriculture, Trade, and Consumer Protection has the authority to investigate the management of a cooperative and force disclosure of relevant management practices to members.40

Over the years, these federal regulatory ambiguities and state-level variations made room for large co-ops to adopt less accountable decision-making structures and to develop internal conflicts of interest among different members and different parts of their businesses. At the same time, Capper- Volstead freed farmers to build cooperatives into viable players in the agricultural economy, eventually becoming critical agents in New Deal farm and rural development policy. This history of how co-ops have or have not served farmers provides direction for reforming cooperatives today, as addressed in Part VII.

III. Cooperatives in the New Deal Era

Congress passed Capper-Volstead at a time when most American farmers were suffering. As European countries and their farm sectors recovered from World War I, American food exports fell sharply. Meanwhile, the emergence of giant national brands such as Kellogg’s, Birdseye, and Borden—and of giant grocery chains such as A&P—further eroded the market power of farmers, as a few, highly concentrated buyers turned farmers into price takers.41 At the same time, as John Deere and International Harvester tractors replaced horses and mules, and as chemical fertilizers, hybrid seed, and other new technologies came into use, farmers faced rising costs for inputs, while increasing yields drove down farm-gate prices.42 All these factors led to a deep depression across rural America, even as urban America prospered during the Roaring ‘20s.43

With the coming of the Great Depression, the plight of America's farmers only got worse. President Herbert Hoover attempted to stem the growing farm crisis by bolstering the resources and powers of cooperatives. He signed the Agricultural Marketing Act of 1929 to create a $500 million revolving federal loan program, administered by a newly formed Farm Board, which cooperatives could use to buy up surplus commodities and withhold them from the market until prices rebounded. Hoover saw support of cooperatives as strongly in the self-help tradition. In his mind, and in those of many other like-minded conservatives of the era, cooperatives helped foster the free enterprise system by allowing farmers to match the growing market power of larger agribusinesses.44

But as the Great Depression deepened, this approach alone proved inadequate to the task.45 Even when subsidized by federal loans, cooperatives were not able to fix the problem of overproduction because they ultimately lacked the ability to control output. Faced with this reality, President Franklin Delano Roosevelt during his first 100 days in office pushed through an Agricultural Adjustment Act (AAA) that created a federal supply management program to support crop prices. This program included the establishment of agricultural marketing agreements and orders. Each of these directives covered a single commodity, usually for a specific region, and set specific production quotas to prevent oversupply, taking the burden to move markets off cooperatives.

Conservative cooperative organizations steeped in the self-help tradition, such as the National Cooperative Council ( NCC), initially rejected the government interventions of the first AAA and viewed the bureaucracy it required as a competitor to cooperatives.46 But the NCC came to support subsequent versions of the AAA, which included expanded cooperative credit programs and permitted cooperative leaders to join elected farmer committees tasked with administering AAA marketing agreements and orders.47 In this way, cooperatives became vehicles for administering supply management programs. The 1937 Farm Security Administration (FSA) further promoted the development of cooperatives.48

These developments brought renewed strength to the cooperative movement during the following decades. Membership in agricultural cooperatives grew from 3.1 million to 3.4 million during the 1930s and then doubled to 7.1 million by 1950.49 In combination with other policies, the growth of co-ops contributed to a substantial increase in farmer incomes relative to the rest of the population. In 1934, the per person disposable income of people living on farms was 39% of the per person disposable income of all Americans. By the beginning of the 1970s, that ratio had increased to 100%.50

Cooperatives were particularly instrumental for Black farmers, who otherwise did not equally receive the benefits of—or worse, were displaced by—New Deal farm policy.51 In addition to FSA-supported cooperatives, which may have contributed to some moderate gains in Black Southern farmland ownership between 1940 and 1945, Black farmers sought to build power and circumvent discrimination by forming cooperatives during the civil rights movement (more below).52

IV. Consolidating Co-ops

During recent decades, the total agricultural business done by cooperatives has continued to increase. However, dramatic consolidation among co-ops has paralleled this growth, particularly since the 1970s. Even as co-ops did more and more business, there were fewer and fewer of them. Due primarily to mergers and buyouts, their number dropped from 6,445 in 1979 to only 2,186 in 2014, a decline of 66%.53 In the process, many larger cooperatives began to resemble the agribusiness firms that they were initially designed to combat, growing more distant from members and their interests, and leaving farmers with fewer buyers and less bargaining power once again.

This increasing concentration among co-ops occurred as the industries that co-ops deal with—including food processing, retailing, seed, and pesticide manufacturing, among others—were consolidating into much larger, investor-owned enterprises. Thirty agricultural chemical companies making insecticides, herbicides, and fungicides in the 1970s had merged by 2001 into only six. Concurrently, chemical companies bought up seed companies that had genetically engineered new plant forms that optimized the use of specific herbicides.54

These parallel processes of consolidation among co-ops and investor-owned firms occurred in the wake of a sea change in antitrust policy that started in late 1970s and accelerated during and after the Reagan administration. In this new paradigm, federal regulators and the courts issued new merger guidelines and reinterpreted antitrust laws in ways that made preventing mergers or breaking up monopolies very difficult.55 To appreciate the magnitude of the change in antitrust enforcement, consider that in the 1960s the Supreme Court ruled illegal a merger between two regional supermarket chains with a combined 7.5% market share in the Los Angeles metropolitan area.56 By contrast, the courts and federal regulators waved through 385 grocery mergers between 1996 and 1999 alone.57 The national market share of the top four grocery chains grew from 17% in 1994 to 40.3% in 2016.58

Courts and regulators have also for the most part stood by as many traditional farmer co-ops have grown into massive, integrated monopolies and oligopolies whose interests are not clearly and consistently aligned with that of their member farmers. Perhaps the most notorious example is Dairy Farmers of America. DFA was formed in 1998 as the result of a merger among four large dairy co-ops. At the time, as DFA's official corporate history explains, co-ops had to get bigger in order to compete: "As milk processors and grocers grew larger and more national in scope, it was clear that the regional structure of the traditional cooperative couldn't keep up."59

DFA would soon become far more than just a combination of traditional marketing co-ops. It soon integrated vertically into all aspects of dairy production. Not only did it come to control 46 manufacturing plants making everything from Dairy Pure milk to specialty coffee drinks, but DFA also struck deals to become the sole milk supplier for dominant milk processor Dean Foods in several regions.60 In these places, farmers had to either join DFA or sell through DFA controlled marketing agencies if they wanted to sell to Dean.61 Meanwhile, DFA's dominion expanded through its marketing arm, Dairy Marketing Services, into milk testing and trucking from farm to market.62 Before long, DFA Chairman Gary Harman was flying around the country in DFA’s corporate jet while collecting $31.6 million during his seven-year tenure with the cooperative.63

But the individual member farmers who nominally owned the co-op did not do so well. As DFA expanded into downstream businesses such as processing and distributing milk and milk products, the interests of DFA’s managers and its member farmers diverged. DFA's managers wanted to maximize the surplus revenue flowing to the enterprise—and, by extension, their own salaries and perks—by paying the lowest amount possible for the milk they bought for the food processing plants they controlled. In contrast, DFA’s members wanted the organization to maximize the prices farmers got paid for their milk. The members might have prevailed, had they been better organized and informed, but they were spread throughout the country and in most instances were working longer and longer hours to save their failing dairy farms as milk prices decreased. Ben Burkett, a produce and grain farmer and state coordinator for the Mississippi Association of Cooperatives, perfectly captures this dynamic between co-op members and management:

All farmers—regardless of what they raise—should be paid a fair price. A good cooperative will help their farmer members get fair prices, but many have become vertically integrated and act just like corporations, forgetting who supports them and for whom they’re supposed to provide services.64

In the case of DFA, many farmer members felt they had no other recourse for fair compensation but to bring lawsuits against their own co-op. In 2014, DFA paid $40 million to a group of Northeastern dairy farmers who alleged in their lawsuit that DFA had conspired with Dean Foods to lower milk prices in the Northeast. In a similar case in the Southeast, DFA agreed to pay $140 million to settle charges of conspiring with Dean Foods to eliminate competition from other milk buyers and reduce the farm-gate milk price. There are many instances of DFA coercing farmers to join DFA after the co-op bought up milk plants or supply contracts formerly held by different co-ops.65

#### 3. The plantext is poorly written:

#### a. “adopt” doesn’t mean or encompass ‘enforce’

Morath 21 (MIKE MORATH, COMMISSIONER OF EDUCATION. OPINION In ANDREW SHANE EMERINE, Petitioner, v. NECHES INDEPENDENT SCHOOL DISTRICT, Respondent. DOCKET NO. 028-R10-02-2021, 2021 TX EDUC. AGENCY LEXIS 19. July 14, 2021. Lexis accessed online via KU Libraries, date accessed 9/22/21)

Further, Texas Education Code § 26.011(a) is a provision that protects parents; it requires a grievance procedure for violations of parents' rights under Chapter 26. Chapter 26 concerns parents' rights, not teachers' rights. [\*9] Only parents have the standing to allege a violation of chapter 26. A teacher cannot defeat a parent's complaint against him or her by showing that the district did not follow its complaint process. Petitioner lacks standing to make his Texas Education Code § 26.011(a) claim. Additionally, as the Commissioner has held in Parents v. Socorro Independent School District, Docket No. 039-R10-05-2020 (Comm'r Educ. 2020), adoption and enforcement are distinct concepts; a requirement to adopt a policy is not violated by alleged improper enforcement of that policy. The term "adopt" does not mean or encompass the term "enforce." When the Legislature wishes a body to adopt and enforce a policy it says so. 4

#### b. “agricultural”—mega-corporations like Monsanto fall in other sectors like biotech

Nannes 1 (JOHN M. NANNES-ACTING ASSISTANT ATTORNEY GENERAL ANTITRUST DIVISION, “STATEMENT OF JOHN M. NANNES ACTING ASSISTANT ATTORNEY GENERAL ANTITRUST DIVISION BEFORE THE SUBCOMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT & RELATED AGENCIES COMMITTEE ON APPROPRIATIONS UNITED STATES SENATE CONCERNING AGRICULTURAL MARKET CONCENTRATION” , Department of Justice, <https://www.justice.gov/archive/atr/public/testimony/8239.htm> , PRESENTED ON MAY 17, 2001, date accessed 1/3/21)

Taken as a whole, these enforcement actions provide a good picture of our merger enforcement efforts in agriculture-related industries. The Antitrust Division carefully reviews agricultural mergers for their competitive implications, and files suit if a merger is likely to lead to anticompetitive prices either for products purchased by farmers (New Holland/Case) or for products sold by farmers (Cargill/ Continental). The Division's concerns are not limited to traditional agricultural products, but extend also to biotechnology innovation (Monsanto/DeKalb and Monsanto/ Delta & Pine Land). And, while the Antitrust Division considers proposed divestitures and other forms of relief that permit a merger to proceed as restructured, the Division challenges a merger outright if it concludes that lesser forms of relief are not likely to address fully the competitive problems raised by the merger (Monsanto/ Delta & Pine Land).

#### c. “mergers”—the plantext doesn’t change acquisitions *at all*—they’re distinct

Hader and Syfert 99 (Stephen M. Hader, Esq.-B.A. 1984, State University of New York at Buffalo; J.D. 1987, Rutgers University. Mr. Hader is a partner in the International Division of Parker, Poe, Adams & Bernstein, LLP in Charlotte, North Carolina. Mr. Hader also served as General Attorney to the Immigration and Naturalization Service from 1987 to 1989. He practices in the areas of U.S. immigration and naturalization law. Scott D. Syfert, Esq.-B.C. 1990, The London School of Economics; B.A. 1991; The University of North Carolina at Chapel Hill; M.A. 1994, The University of Virginia; J.D. 1997, The University of North Carolina at Chapel Hill. Mr. Syfert is an associate in the International Division of Parker, Poe, Adams & Bernstein, LLP in Charlotte, North Carolina. He is involved in immigration, mergers and acquisitions, and general corporate law. “ARTICLE: The Immigration Consequences of Mergers, Acquisitions, and Other Corporate Restructuring: A Practitioner's Guide” , 24 N.C.J. Int'l L. & Com. Reg. 547, 24 N.C.J. Int'l L. & Com. Reg. 547, Spring, 1999, Lexis accessed online via KU libraries, date accessed 12/22/21)

A merger is not the same as an acquisition. In the M&A field, the term "acquisition" describes a transfer of ownership, generally of a corporation, by merger, stock or asset sale, or some combination thereof. 118 The term "merger," however, is a narrow technical term that relates to a statutorily created procedure in which two or more corporations or other entities combine into one. 119 A merger may or may not have anything to do with a corporate acquisition. A merger is one means by which an acquisition can be carried out.

## 1NC — Big Ag

### 1NC — Turn

#### Concentrated ag is the linchpin of innovation – the biggest firms have outsized R&D spending and drive international dissemination.

Fuglie et al, PhDs in Econ, 12

(Keith, Ph.D. and M.S. in Applied Econ from the University of Minnesota, John King, Econ (Industrial Organization) from Vanderbilt University, David Schimmelpfennig, Econ from MSU, senior ERS economists, and Paul Heisey, Ag Econ from the University of Wisconsin-Madison, Rising Concentration in Agricultural Input Industries Influences New Farm Technologies, Economic Research Service, Amber Waves 10(4)) BW

The increase in R&D performed by global agricultural input industries (see “Private Industry Investing Heavily, and Globally, in Research To Improve Agricultural Productivity” in the June 2012 issue of Amber Waves) has coincided with significant changes to the structure of these industries. The largest firms have increased their market shares and account for most of the investment in (and ownership of) new innovations in these industries. Implications of market concentration in the U.S. seed industry were addressed earlier in Amber Waves and in other ERS research (see suggested readings). New ERS data allow a closer look into global market concentration across a number of agricultural input industries. Market Concentration is Increasing in Research-Intensive Agricultural Input Industries Since the 1990s, global market concentration (the share of global industry sales earned by the largest firms) has increased in the crop seed/biotechnology, agricultural chemical, animal health, animal breeding, and farm machinery industries – all of which invest heavily in agricultural research. By 2009, the largest four firms in each of these industries accounted for at least 50 percent of global market sales. Market concentration was particularly high in animal genetics and breeding, where the four-firm concentration ratio reached 56 percent in 2006/07 (the latest year for which data are available). Growth in global market concentration over 1994-2009 was most rapid in the crop seed industry, where the market share of the four largest firms more than doubled from 21 to 54 percent. The top eight firms in all five input sectors had between a 61- and 75-percent share of global market sales by 2009. Factors Driving Market Concentration Vary by Industry Firms increase their market share either by expanding their sales faster than the industry average or by acquiring or merging with other firms in the industry. Firms can expand their sales faster than others in the industry by offering better products or services (often an outgrowth of larger R&D investments), improving their marketing ability, or offering lower prices (often through economies of scale). The leading input firms in 2010 had faster sales growth than the industry average, but a significant amount of that growth came from acquisitions of other firms. Reasons for mergers and acquisitions vary by industry and firm circumstances but include market forces and the emergence of new technologies. Government policies can also affect the ability of firms to compete in markets and their incentives to merge with or acquire other firms.

• In the crop seed and animal breeding sectors, the emergence of biotechnology was a major driver of consolidation. Companies sought to acquire relevant technological capacities and serve larger markets to share the large fixed costs associated with meeting regulatory approval for new biotechnology innovations.

Table

Description automatically generated

Chart

Description automatically generated with low confidence

• In the animal breeding sector, vertical integration in the poultry and livestock industries enabled some large firms to acquire capacity in animal breeding as part of their integrated structure.

• In the farm machinery industry, many of the major mergers and acquisitions can be traced to large financial losses sustained by some leading firms during periods when the farm sector was in prolonged recession, which substantially reduced demand for farm machinery as farmers delayed major capital purchases. Firms experiencing large financial losses are often vulnerable to acquisition.

• The agricultural chemical sector has been heavily affected by changes in government regulations governing the health, safety, and environmental impacts of new and existing pesticide formulations: larger firms appear better able to address these stricter regulatory requirements.

• Consolidation in the animal health sector appears to be largely a byproduct of mergers and acquisitions in the pharmaceutical industry, as most of the leading animal health companies are subsidiaries of large pharmaceutical companies.

The Crop Seed-Biotechnology Industry Has Undergone Significant Structural Transformation In 2009, seven large seed companies each had annual seed sales of over $600 million. Five of these top seed companies--Syngenta, Bayer, Dow, Dupont, and Monsanto- -are also market leaders in agricultural chemicals. A sixth firm, BASF, is making significant investments in crop biotechnology research but so far reports few crop seed or trait sales, although it is a market leader in agricultural chemicals. These companies currently constitute the “Big 6” involved in crop seed, biotechnology, and chemical research. The seed-biotechnology industry has been reliant on small and medium-sized enterprises (SMEs) as sources of new innovation. New SME startups (often spinoffs from university research) tend to specialize in commercial development of a new research tool, genetic trait, or both. Significant entry by SMEs into the seed-biotechnology sector began in the late 1970s and early 1980s, with a second wave of new entrants in the late 1990s and early 2000s. In recent years, exits have outnumbered entrants, and by 2008 just over 30 SMEs specializing in crop biotechnology were still active. The majority of the exits from the industry were the result of acquisition by larger firms. Of 27 crop biotechnology SMEs that were acquired between 1985 and 2009, 20 were acquired either directly by one of the Big 6 or by a company that itself was eventually acquired by a Big 6 company. Concentration in a research-intensive industry can be measured not only in terms of share of product sales but in share of new innovations. Firms that are most successful in creating new innovations are often better positioned to dominate the market (although not all new product introductions will be commercially successful). In research for genetically engineered crop varieties, for example, companies typically obtain a patent first, then initiate field trials, and finally obtain regulatory approval to sell crop seeds. Although there is considerable overlap in terms of companies participating, the markets for crop seeds can be distinguished from markets for genetically modified traits. The shares of these research outputs held by the Big 6 companies in each case are between 55 and 95 percent. Consequences of Concentration For Agricultural Innovation The rising concentration in global agricultural input markets means fewer firms are supplying those inputs to farmers. It also means that fewer firms are responsible for many of the new innovations that drive growth in agricultural productivity. The share of private R&D performed by the largest firms is even larger than their share of sales. In crop seed and biotechnology, eight seed-biotechnology companies accounted for 76 percent of all R&D spending

Graphical user interface, text, application

Description automatically generated

by this industry in 2010. In agricultural chemicals, five companies (each with over $2 billion sales in 2010) were responsible for over 74 percent of the R&D in this sector. In farm machinery, four companies (each with over $5 billion in farm machinery sales) accounted for over 57 percent of farm machinery R&D, and in animal health, just eight companies accounted for over 66 percent of R&D. Moreover, all of these leading firms are multinational companies with R&D facilities positioned around the world. These global research networks allow large firms to develop and adapt new technologies to local conditions, meet national regulatory requirements for new product introductions, and achieve cost economies in some of their R&D activities. Greater market power resulting from the structural changes in agricultural input industries means that farmers may pay higher prices for purchased inputs. With stronger legal protection over their intellectual property and fewer firms offering competition, firms can charge higher prices for their new innovations. Such price premiums are necessary to provide firms the means (and incentive) to invest in R&D in the first place, and farmers are willing to pay higher prices so long as the gains from higher productivity outweigh their higher costs. In fact, for the past two decades, the prices of farm inputs have been rising faster than the prices U.S. farmers receive for their crops and livestock. The largest increase over 1990-2010 was in crop seed prices, which more than doubled relative to the price received for agricultural commodities. This increase was due, at least in part, to the value of the new seed traits resulting from research investments made by seed/biotechnology companies. However, higher input prices may also stem from increases in the prices of labor, capital, energy, and other materials used in their manufacture. The sharp rise in the price of fertilizer in 2008-09 was driven by a significant increase in the cost of energy and materials used to make fertilizers, higher transportation costs, and the falling value of the U.S. dollar. Multiple factors contribute to changing prices for farm inputs, and it is difficult to isolate the effects of market power, product quality, and other factors affecting these prices. The growing concentration in agricultural input industries raises a number of issues. One is the inherent tension between public policies regulating intellectual property rights (IPR) and market competition. While antitrust laws restrict firms from exercising monopoly power, some exceptions are made for intellectual property rights over new innovations. However, antitrust rules may still apply

Chart, line chart

Description automatically generated

to how firms license their intellectual property to other firms. Another issue is whether under the current market and policy environment there are significant economies of scale in crop and animal biotechnology, implying that only very large firms can hope to compete effectively in these sectors. This might mean there is a significant barrier to entry for new firms and a potential loss of new innovations, particularly from SMEs. On the other hand, the global reach of the large, multinational agricultural input firms could speed up the rate of international technology transfer and help to close the productivity gaps between regions and countries. The rate of transfer will be influenced by international trade agreements and how countries regulate and protect IPR in new agricultural innovations, especially those involving genetically modified organisms. Finally, public investments in research can be an important enabler of market competition. Examples include public provision of elite parent material for crop/livestock breeding companies and the basic scientific tools necessary for commercial development using genomics and molecular biology.

#### The plan’s uncertainty and disruption to capacity for tech innovation decimates growth of the ag sector

Dr. Don Racheter 17, President of the Public Interest Institute, Master's Degree and Ph.D. in Political Science from the University of Iowa, Taught at the University of Iowa and Central College, “Upcoming Mergers Benefit America's Farmers”, Des Moines Register, 8/6/2017, https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/08/06/upcoming-mergers-benefit-americas-farmers/537250001/

America’s farmers are being challenged to prepare for a global, growing population and a robust international trade market.

Not only has every farmer had to increase the number of people that he or she is responsible for feeding by almost 130 people since 1960, but international markets also are eager for Iowa’s soybeans and other agricultural products.

These market-based problems need specific market-centric solutions. By leaning on the power of an innovative and dynamic private sector, we can ensure our farmers have the tools to compete in any economic climate.

Industry leaders such as Bayer, Monsanto, Dow and DuPont are meeting these challenges head-on with a commitment to developing the latest technologies that make America’s farms both more efficient and effective. These efforts have filled the gap in public investment to groundbreaking agricultural research and development. According to the USDA Economic Research Service, government investment in agricultural R&D dropped to just 30 percent of total agricultural R&D funding since 2013.

Today, the private sector is responsible for many of the innovations that are currently shaping the future of farming in America, and more resources in the private sector means farmers can expect these advances in technology faster. The latest breakthroughs in precision farming techniques are helping farmers target their crop treatments, saving small farms money while also limiting their environmental footprint. For example, John Deere tractors use GPS sensors so that farmers don’t cover the same area twice, which can reduce their fuel input by up to 40 percent.

More permanent partnerships, such as the potential merger between Bayer and Monsanto, will ensure that leading ag companies are able to invest additional resources to bring advanced solutions to farmers. Farmers will be able to spend less time and resources on daily challenges, enabling them to meet the international demand for Iowa’s ag products.

As opponents to mergers pop up as frequently as weeds after a strong rain, we should examine what might possibly be driving their motivation. Rather than truly believing that these mergers harm consumers, many are driven by political motivations. Case in point is the July 21 commentary by Austin Frerick ["To save rural Iowa, oppose Monsanto-Bayer mega-merger"], a little-known former U.S. Treasury economist under the Obama Administration. One can’t help but question Mr. Frerick’s perspective given his support for greater government interference in the marketplace while government investment in R&D has continued to decline.

Cloaking a progressive agenda behind a call for consumers to reject private sector investment by two leading ag companies with a stake in America’s farming future is both disingenuous and harmful. Anyone who has spent any real time in a farmer’s field knows that what agriculture really needs is to attract, not reject, more investment in innovative agricultural technologies.

What critics fail to highlight is that the Bayer-Monsanto merger is the perfect example of bringing together two companies that operate in largely complementary fields to develop new tools and products with more capital. In fact, Bayer focuses mostly on crop protection, while Monsanto is known for seeds and traits capabilities. Alone, it can take each company more than a decade to create a new product for farmers, but together, the time could shorten significantly.

In an ever-changing free market, it is natural for businesses to seek to maintain a competitive advantage over their rivals by expanding their offerings to the consumers they serve. Bayer-Monsanto’s focus on finding the next generation of farming technology will spur their competitors to do the same to keep up.

Farmers are constantly battling uncertainty in their line of business and don’t have time for political posturing. The benefits from greater private sector investment in innovation from these upcoming mergers are clear and demonstrable and are necessary for the future of American farming.

#### Innovation is driving down environmental damage from farming BUT is only feasible with concentrated farming

Dr. Jayson Lusk 16, Professor of Agricultural Economics at Oklahoma State University, “Why Industrial Farms Are Good for the Environment”, The New York Times, 9/23/2016, Lexis

There is much to like about small, local farms and their influence on what we eat. But if we are to sustainably deal with problems presented by population growth and climate change, we need to look to the farmers who grow a majority of the country’s food and fiber.

Large farmers — who are responsible for 80 percent of the food sales in the United States, though they make up fewer than 8 percent of all farms, according to 2012 data from the Department of Agriculture — are among the most progressive, technologically savvy growers on the planet. Their technology has helped make them far gentler on the environment than at any time in history. And a new wave of innovation makes them more sustainable still.

A vast majority of the farms are family-owned. Very few, about 3 percent, are run by nonfamily corporations. Large farm owners (about 159,000) number fewer than the residents of a medium-size city like Springfield, Mo. Their wares, from milk, lettuce and beef to soy, are unlikely to be highlighted on the menus of farm-to-table restaurants, but they fill the shelves at your local grocery store.

There are legitimate fears about soil erosion, manure lagoons, animal welfare and nitrogen runoff at large farms — but it’s not just environmental groups that worry. Farmers are also concerned about fertilizer use and soil runoff.

That’s one reason they’re turning to high-tech solutions like precision agriculture. Using location-specific information about soil nutrients, moisture and productivity of the previous year, new tools, known as “variable rate applicators,” can put fertilizer only on those areas of the field that need it (which may reduce nitrogen runoff into waterways).

GPS signals drive many of today’s tractors, and new planters are allowing farmers to distribute seed varieties to diverse spots of a field to produce more food from each unit of land. They also modulate the amount and type of seed on each part of a field — in some places, leaving none at all.

Many food shoppers have difficulty comprehending the scale and complexity facing modern farmers, especially those who compete in a global marketplace. For example, the median lettuce field is managed by a farmer who has 1,373 football fields of that plant to oversee.

For tomatoes, the figure is 620 football fields; for wheat, 688 football fields; for corn, 453 football fields.

How are farmers able to manage growing crops on this daunting scale? Decades ago, they dreamed about tools to make their jobs easier, more efficient and better for the land: soil sensors to measure water content, drones, satellite images, alternative management techniques like low- and no-till farming, efficient irrigation and mechanical harvesters.

Today, that technology is a regular part of operations at large farms. Farmers watch the evolution of crop prices and track thunderstorms on their smartphones. They use livestock waste to create electricity using anaerobic digesters, which convert manure to methane. Drones monitor crop yields, insect infestations and the location and health of cattle. Innovators are moving high-value crops indoors to better control water use and pests.

Before “factory farming” became a pejorative, agricultural scholars of the mid-20th century were calling for farmers to do just that — become more factorylike and businesslike. From that time, farm sizes have risen significantly. It is precisely this large size that is often criticized today in the belief that large farms put profit ahead of soil and animal health.

But increased size has advantages, especially better opportunities to invest in new technologies and to benefit from economies of scale. Buying a $400,000 combine that gives farmers detailed information on the variations in crop yield in different parts of the field would never pay on just five acres of land; at 5,000 acres, it is a different story.

These technologies reduce the use of water and fertilizer and harm to the environment. Modern seed varieties, some of which were brought about by biotechnology, have allowed farmers to convert to low- and no-till cropping systems, and can encourage the adoption of nitrogen-fixing cover crops such as clover or alfalfa to promote soil health.

Herbicide-resistant crops let farmers control weeds without plowing, and the same technology allows growers to kill off cover crops if they interfere with the planting of cash crops. The herbicide-resistant crops have some downsides: They can lead to farmers’ using more herbicide (though the type of herbicide is important, and the new crops have often led to the use of safer, less toxic ones).

But in most cases, it’s a trade-off worth making, because they enable no-till farming methods, which help prevent soil erosion.

These practices are one reason soil erosion has declined more than 40 percent since the 1980s.

Improvements in agricultural technologies and production practices have significantly lowered the use of energy and water, and greenhouse-gas emissions of food production per unit of output over time. United States crop production now is twice what it was in 1970.

That would not be a good change if more land, water, pesticides and labor were being used. But that is not what happened: Agriculture is using nearly half the labor and 16 percent less land than it did in 1970.

Instead, farmers increased production through innovation. Wheat breeders, for example, using traditional techniques assisted by the latest genetic tools and information, have created varieties that resist disease without numerous applications of insecticides and fungicides. Nearly all corn and soybean farmers practice crop rotation, giving soil a chance to recover. Research is moving beyond simple measures of nitrogen and phosphorus content to look at the microbes in the soil.

New industrywide initiatives are focused on quantifying and measuring soil health. The goal is to provide measurements of factors affecting the long-term value of the soil and to identify which practices — organic, conventional or otherwise — will ensure that farmers can responsibly produce plenty of food for our grandchildren.

#### Farming is rapidly becoming sustainable---all environmental metrics are improving

Michael Shellenberger 20, Founder and President of Environmental Progress, Former President of the Breakthrough Institute, Apocalypse Never: Why Environmental Alarmism Hurts Us All, ISBN: 0063001705,9780063001701

As farms become more productive, grasslands, forests, and wildlife are returning. Globally, the rate of reforestation is catching up to a slowing rate of deforestation.19

Humankind’s use of wood has peaked and could soon decline significantly.20 And humankind’s use of land for agriculture is likely near its peak and capable of declining soon.21 All of this is wonderful news for everyone who cares about achieving universal prosperity and environmental protection.

The key is producing more food on less land. While the amount of land used for agriculture has increased by 8 percent since 1961, the amount of food produced has grown by an astonishing 300 percent.22

Though pastureland and cropland expanded 5 and 16 percent, between 1961 and 2017, the maximum extent of total agriculture land occurred in the 1990s, and declined significantly since then, led by a 4.5 percent drop in pastureland since 2000.23 Between 2000 and 2017, the production of beef and cow’s milk increased by 19 and 38 percent, respectively, even as total land used globally for pasture shrank.24

The replacement of farm animals with machines massively reduced land required for food production. By moving from horses and mules to tractors and combine harvesters, the United States slashed the amount of land required to produce animal feed by an area the size of California. That land savings constituted an astonishing one-quarter of total U.S. land used for agriculture.25

Today, hundreds of millions of horses, cattle, oxen, and other animals are still being used as draft animals for farming in Asia, Africa, and Latin America. Not having to grow food to feed them could free up significant amounts of land for endangered species, just as it did in Europe and North America.

As technology becomes more available, crop yields will continue to rise, even under higher temperatures. Modernized agricultural techniques and inputs could increase rice, wheat, and corn yields five-fold in sub-Saharan Africa, India, and developing nations.26 Experts say sub-Saharan African farms can increase yields by nearly 100 percent by 2050 simply through access to fertilizer, irrigation, and farm machinery.27

If every nation raised its agricultural productivity to the levels of its most successful farmers, global food yields would rise as much as 70 percent.28 If every nation increased the number of crops per year to its full potential, food crop yields could rise another 50 percent.29

Things are headed in the right direction regarding other environmental measures. Water pollution is declining in relative terms, per unit of production, and in absolute terms in some nations. The use of water per unit of agricultural production has been declining as farmers have become more precise in irrigation methods.

High-yield farming produces far less nitrogen pollution run-off than lowyield farming. While rich nations produce 70 percent higher yields than poor nations, they use just 54 percent more nitrogen.30 Nations get better at using nitrogen fertilizer over time. Since the early 1960s, the Netherlands has doubled its yields while using the same amount of fertilizer.31

High-yield farming is also better for soils. Eighty percent of all degraded soils are in poor and developing nations of Asia, Latin America, and Africa. The rate of soil loss is twice as high in developing nations as in developed ones. Thanks to the use of fertilizer, wealthy European nations and the United States have adopted soil conservation and no-till methods, which prevent erosion. In the United States, soil erosion declined 40 percent in just fifteen years, between 1982 and 1997, while yields rose.32

### 1NC — AT: Small Farms

#### They can’t solve small farms—only corporate competitors could file suit

Dorsey 18 (Elyse Dorsey – Associate @ Wilson Sonsini Goodrich & Rosati. Jan M. Rybnicek – Senior Associate @ Freshfields Bruckhaus Deringer. Joshua D. Wright – Law Prof @ George Mason University, Executive Director of the Global Antitrust Institute, and Senior of Counsel @ Wilson Sonsini Goodrich & Rosati. “Hipster Antitrust Meets Public Choice Economics: The Consumer Welfare Standard, Rule of Law, and Rent-Seeking,” *Competition Policy International Antitrust Chronicle*. April 2018. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3165192>)

\*language modified in brackets

Additionally, the incredibly costly nature of antitrust proceedings exacerbates its vulnerability to rent seeking.39 Antitrust cases and investigations can drag on for years, entail the collecting, processing, and production of millions of documents, and involve tremendous attorneys’ fees. Remedies (or consent terms) can be invasive, last for years, and impair a defendant’s ability to adapt to changing circumstances and thus to remain competitively viable. Looming in the background is the possibility of trebled damages at the end of the day. Consider that an unhappy competitor could embroil a rival in an antitrust quagmire via its own litigation, or by complaining to a government agency and potentially triggering an investigation, that would divert significant amounts of that rival’s resources for years — thereby ~~crippling~~ [devastating] a rival and diminishing the amount of competition it faces. With so much at stake, conditions are ripe for actors to engage in just such rent-seeking activities in an attempt to appropriate some of this vast wealth for themselves. The empirical evidence and historical record of antitrust actions — particularly during the era when antitrust was explicitly governed by a vague, multi-faceted standard — provide ample support for public choice theory and the economic theory of regulation, while tending to reject the public interest account of regulatory behavior.40

### 1NC — AT: Tam

#### Their Tam ev is their main solvency ev—that’s written by an undergrad, we’ll insert this

Graphical user interface, text, application, email

Description automatically generated

### 1NC — US Exports Not Key

#### US food exports only feed wealthy countries – no internal link

Holobar 16 — Krista Holobar, Agroecology and Food Policy Writer at *Civil Eats*—a food policy publication, 2016 (“Does Big Ag Really Feed the World? New Data Says Not So Much,” *Civil Eats*, October 5th, Available Online at <https://civileats.com/2016/10/05/does-big-ag-really-feed-the-world/>, Accessed 10-12-2018)

Ever since the U.N. announced that the world population is projected to exceed 9 billion by 2050 and global food production will have to more than double by that time, U.S. agricultural and agribusiness interests have been making the case that America’s farmers will have to double their production of grain and meat to “feed the world.” Those who make this argument maintain that industrial farming—which relies heavily on biotechnology and pesticides—is the only way U.S. farmers can double production, while organic and other agroecological methods will only put countless people at risk of hunger and malnutrition. But new data compiled by Environmental Working Group (EWG) makes it clear that we’re not really feeding the parts of the world that need it. In reality, most agricultural exports from the U.S. go to countries whose citizens can afford to pay for them. Our top five export destinations are Canada, China, Mexico, the European Union, and Japan—all countries with “high” or “very high” UN development scores and “very low” or “moderately low” Food and Agriculture Organization hunger scores. In 2015, less than one percent of America’s agricultural exports went to the 19 countries with the highest level of undernourishment, while exports to the top 20 destinations were 158 times greater. And over the last decade, the value of U.S. agricultural exports to the countries with very high or high undernourishment averaged only 0.7 [point seven] percent of the value of total agricultural exports.

### 1NC — No Ag Pollution

#### Pesticide use is plummeting

Alison McGrew 20, Writer for Illinois Farm Families, “3 Myths About Sustainable Agriculture”, March 2020, https://www.watchusgrow.org/2020/03/02/3-myths-about-sustainable-agriculture/

Myth #3: Farmers apply too many pesticides on their fields, which impacts water quality.

Fact: Today’s farmers use fewer pesticides than generations past, thanks to technology advancements:

* Smarter crop protection tools – today’s chemicals are precise, effective and leave virtually no residue on the soil, water or crop.
* Better with biotech – some GMO crops have been genetically engineered to fight off pests, so farmers don’t have to use as many chemicals.
* More accuracy – instead of spraying entire fields for weeds and pests, farmers can use equipment and machinery with variable rate technology to spray precisely where needed.

As mindful as we are about what’s happening in our fields, we also care what happens around them. It’s why many farmers choose to use cover crops, reduce tillage and plant vegetation around nearby bodies of water – all to keep the soil healthy and where it belongs.

### 1NC — Food Resilient

#### Adaptation makes agriculture resilient

* plants are being modified to be successful in droughts
* ocean and island crops are resilient to rising sea levels and salinity
* livestock resistant to diseases
* livestock prepared for droughts

FAOUN 19 [FAO COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE @ UN, “THE STATE OF THE WORLD’s BIODIVERSITY FOR FOOD AND AGRICULTURE”, https://www.courthousenews.com/wp-content/uploads/2019/02/fao-report.pdf]

Maintaining, using and developing adapted genetic resources A number of countries note the significance of well-adapted species, varieties or breeds in terms of enhancing resilience to climate change. Several specific examples of how such components of BFA have been utilized in adaptation efforts are provided. For example, Papua New Guinea mentions the distribution to farmers of crop accessions identified in ex situ collections as being tolerant to salinity (taro and cassava varieties), drought (cassava, banana and aibika13 varieties) and flooding (taro and banana varieties). It notes that this activity proved very useful in sustaining food security during the drought that struck the country in 2015 and 2016,14 when 40 percent of the population was seriously affected. Panama reports that its criollo livestock breeds have a combination of characteristics that are not found in any introduced breeds, including high fertility rates, longevity, resistance to parasites and diseases and good grazing abilities, including the ability to make use of poor-quality pastures. It notes, in particular, the potential of two locally adapted cattle breeds, the Guaymi and the Guabal^, in climate change adaptation. It also mentions, among its climate change adaptation measures, the development of maize varieties and hybrids that are tolerant of drought and diplodia rot (a fungal disease) and that grow well in soils with low nitrogen levels. With regard to choices at species level, Sudan reports that some of its livestock keepers have replaced cattle and sheep with dromedaries and goats, as the latter species are better suited to a climate change-affected environment that is more prone to droughts.

Some countries note the significance of participatory breeding programmes in the context of climate change. For example, Oman mentions that local wheat and barley landraces have been improved through such programmes to obtain varieties that have shorter growing seasons and can be managed more flexibly, especially during years with prolonged periods of extreme heat and limited water availability. Ensuring farmers have access to the adapted germplasm they need is another issue highlighted. Nepal, for example, mentions the role of community-based seed banks in providing farmers with immediate access to locally adapted germplasm that can be used in efforts to cope with climate change.

### 1NC — No Food Impact

#### Food insecurity doesn’t cause war.

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

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

### 1NC — No ABR Impact

#### No ABR impact — it’s easy to reverse

FASEB 4-28-2010 Federation of American Societies for Experimental Biology, Science Daily “Putting bacterial antibiotic resistance into reverse” <http://www.sciencedaily.com/releases/2010/04/100426072125.htm>

The use of antibiotics to treat bacterial infections causes a continual and vicious cycle in which antibiotic treatment leads to the emergence and spread of resistant strains, forcing the use of additional drugs leading to further multi-drug resistance. But what if it doesn't have to be that way? In a presentation at the American Society for Biochemistry and Molecular Biology's annual meeting, titled "Driving backwards the evolution of antibiotic resistance," Harvard researcher Roy Kishony discussed his recent work showing that some drug combinations can stop or even reverse the normal trend, favoring bacteria that do not develop resistance. "Normally, when clinicians administer a multi-drug regimen, they do so because the drugs act synergistically and speed up bacterial killing," Kishony explains. However, Kishony's laboratory has focused on the opposite phenomenon: antibiotic interactions that have a suppressive effect, namely when the combined inhibitory effect of using the two drugs together is weaker than that of one of the drugs alone. Kishony and his team identified the suppressive interaction in E. coli, discovering that a combination of tetracycline -- which prevents bacteria from making proteins -- and ciprofloxacin -- which prevents them from copying their DNA -- was not as good as slowing down bacterial growth as one of the antibiotics (ciprofloxacin) by itself. Kishony notes that this suppressive interaction can halt bacterial evolution

[marked]

, because any bacteria that develop a resistance to tetracycline will lose its suppressive effect against ciprofloxacin and die off; therefore, in a population the bacteria that remain non-resistant become the dominant strain.

# 2NC

## T — Prohibitions

#### Advocates explicitly propose presumptions *in lieu of* prohibitions.

Kroll 16 (Kyle R. Kroll-J.D. Candidate 2016, University of Minnesota Law School; B.S.B. 2013, Carlson School of Management, University of Minnesota. NoteAnticompetitive Until Proven Innocent: An Antitrust Proposal To Embargo Covert Patent Privateering Against Small Businesses, 100 Minn. L. Rev. 2167, 2212. May, 2016. Lexis accessed via KU Libraries, date accessed 12/22/21)

Lastly, a blanket prohibition against the use of PAEs in patent litigation would probably not curb patent privateering. 290 First, it would be difficult for courts to determine if a company truly is a PAE or not, given the secretiveness of privateering arrangements. A court could employ the same criteria as listed in the proposed presumption in Section A, but if it did so, it might as well simply employ the presumption anyway. Second, benign uses of PAEs for litigation by inventors, universities, and small firms would be unjustifiably enjoined. 291 A blanket prohibition on privateering would thus be overly broad. Third, prohibition would still not solve the evidentiary difficulty of discovering the existence of a privateering arrangement or the identity of a sponsor. 292 Fourth, such a prohibition may violate Noerr-Pennington immunity, established by the First Amendment. A presumption, on the other hand, succumbs to none of these difficulties.

#### That’s due to being lighter

Parrish 8 (Austen Parrish- Vice Dean for Academic Affairs and Professor of Law, Southwestern Law School. J.D., Columbia University School of Law, 1997; B.A., University of Washington, 1994. The author is the Director of Southwestern's Summer Law Program in Vancouver, B.C., Canada, where he teaches courses in international and comparative law at the University of British Columbia. ARTICLE: The Effects Test: Extraterritoriality's Fifth Business, 61 Vand. L. Rev. 1455, 1470-1471. October, 2008.Lexis accessed via KU libraries, date accessed 12/22/21)

As territoriality lost its hold over law, 82 the prohibition against extraterritoriality weakened to a mere presumption. 83 Congress had [\*1471] the power to enact extraterritorial laws, but it was presumed not to have used that power in most circumstances. The development of the effects test, however, marked the beginning of the end for meaningful territorial limits on legislative jurisdiction.

#### They’re contextually distinct

Manne et al 18 (Geoffrey A. Manne (President & Founder, International Center for Law & Economics). Julian Morris (Executive Director, International Center for Law & Economics). Kristian Stout (Associate Director, International Center for Law & Economics). Dirk Auer (Senior Fellow, International Center for Law & Economics). “Comments of the International Center for Law & Economics on the Consumer Welfare Standard (Hearing No. 5)” , FTC Hearings on Competition & Consumer Protection in the 21st Century FTC Docket No. FTC-2018-0091 , <https://laweconcenter.org/wp-content/uploads/2019/01/ICLE-FTC-Hearings-CWS-Comments-12-2018.pdf> , December 31, 2018, date accessed 9/20/21)

Just as the CWS evolves to develop more nuanced analysis for conduct that was previously poorly understood and, therefore, subject to sub-optimal prohibitions or presumptions, the doctrine is also capable of growing in order to recognize more expanded claims, or to modify existing doctrine in light of new business practices. Under the CWS

antitrust law can replace rules that require detailed factual assessment of individual cases with simpler, more categorical rules, such as the per se prohibition of price fixing; the modified per se rule applicable to most tying arrangements under Jefferson Parish; presumptions such as those used in horizontal merger analysis: and abbreviated rule of reason standards which do not require plaintiffs to prove harm to competition. While antitrust law moved away from such short-hands in recent years, there is nothing about the [consumer welfare] paradigm that would preclude a movement of the pendulum in the other direction, as evidenced by past episodes of antitrust expansion in monopolization doctrine and enforcement policy.33

Recently, the Supreme Court took up just such a potential modification in Apple v. Pepper. 34 Apple v. Pepper emerged from a claim that Apple’s pricing model for its App Store violates US antitrust laws. The central dispute of the case is whether the Illinois Brick indirect purchaser doctrine35 — which limits standing in price fixing cases only to those parties directly injured, and prevents private actions by subsequent purchasers — can be used to prevent App Store users from suing Apple for its alleged anticompetitive pricing imposed on app developers.36 Those in favor of applying Illinois Brick to prevent the standing of users assert that — following Campos v. Ticketmaster in the 8th Circuit37 — it is the app developers themselves who are injured by the restrictive pricing (while users receive only a pass-through injury).38 Therefore, so the argument goes, end users do not have standing under Illinois Brick to bring an antitrust suit.

#### As well as legally

Billings 99 (LUCY BILLINGS-judge. Opinion in ROXBOROUGH APT CORP v. Becker, 183 Misc. 2d 744 - NY: County Court, Civil Court 1999. Google scholar caselaw, date accessed 9/20/21)

While Real Property Law § 235-f allows a lease to limit roommates to one, the statute does not contain any prohibition or presumption against more than one. Therefore the standard lease provision at issue, which limits the number of roommates "in accordance with" Real Property Law § 235-f, permits more than one roommate.

#### At best they’re effects T

Taylor 2k (GREG TAYLOR- BA (Hons), LLB (Hons) (Adel), LLM (Marburg), GCLP (SA); Barrister and Solicitor of the Supreme Court of South Australia; Lecturer in Law, The University of Adelaide. ARTICLE: COMMONWEALTH v WESTERN AUSTRALIA AND THE OPERATION IN FEDERAL SYSTEMS OF THE PRESUMPTION THAT STATUTES DO NOT APPLY TO THE CROWN, 24 Melbourne U. L.R. 77, 113. April, 2000. Lexis accessed online via KU libraries, date accessed 12/22/21)

Thirdly, it is apparent that, on the facts of this case, the State was attempting to make use of too blunt an instrument to repel the attempted search. The State, as has been said, did not want to defeat the search to save itself from a present or prospective liability under s 10, for there was none; rather, it was concerned to safeguard its sources of information. If fishers thought that the information which they provided to the government might be used against them, they might not co-operate with the State, and this would hinder the research for which it needed the information. This extra-legal consideration (it is extra-legal because allowing a search warrant to be issued would not as a matter of law reduce in the least the legal obligation of fishers under the State Act to furnish information) was the real reason for the State's alarm at the issue of search warrants against it. But as the majority pointed out, 226 the State might be able to claim public interest immunity when seizure of confidential information is threatened. Applying the presumption would lead to a blanket prohibition of searching State premises even where confidential information is not involved, but public interest immunity, a much finer instrument, would exempt from use in criminal proceedings only such information as is confidential and could satisfy other tests (including the test of public interest) for the existence of the immunity. This is clearly a much better way of protecting information which is said to be confidential, because it does not involve a blanket prohibition which catches all information, whether confidential or not. Rather, there is a curial investigation which is specifically designed for the purpose of weighing the competing interests involved in keeping confidential information confidential. In this case the competing interests were the public benefit involved in the research conducted by the State government and the public interest in ensuring that people pay all the tax to which they are liable.

## Solvency

#### Hold them to their plantext and solvency advocate—the reason their advocate says preventing future mergers and acquisitions is key is because it was written in ‘99 and even then it said (YELLOW)

Lauck, 99

[Jon ,Editor in Chief, Minnesota Journal of Global Trade; Ph.D., MA, University of Iowa; BS, South Dakota State University. Jon TOWARD AN AGRARIAN ANTITRUST: A NEW DIRECTION FOR AGRICULTURAL LAW, 75 N.D. L. Rev. 449, North Dakota Law Review, 1999, LN, sh]

The Cargill-Continental merger presents the opportunity to seek a new judicial merger policy that applies to agribusinesses. Plaintiffs could seek a ruling that such a merger among major agricultural firms that buy farm products is presumptively illegal, appealing to older cases such as Philadelphia National Bank. Doing so would give structure its appropriate weight as a consideration in antitrust cases. Instead of accepting a school of economic analysis that tends to find most corporate activity competitive and efficient, a court could recognize the serious limits on economic knowledge and prediction. It could weigh more heavily developing theories of monopsony and sophistication as rationales for finding large agribusiness mergers presumptively illegal, more faithfully honoring Congressional intentions to err on the side of [\*508] decentralization in merger cases. Furthermore, such a judicial policy would recognize the persistent Congressional imperative of promoting a more balanced bargaining relationship between farmers and the buyers of their products. Judicial acceptance of such an argument is more likely given that concentration concerns have historically been expressed in merger law. 375 Merger policy thus provides the most accessible outlet for addressing concerns about concentration in agricultural markets and, following Congressional concerns, addresses the problem before it worsens. IV. CONCLUSION Farmers actively sought antimonopoly legislation in the late nineteenth century and have continued to support its application to the present day. Due to the recent judicial embrace of certain economic theories, however, the antitrust laws have failed to meet their expectations. More recent developments in the interpretation of the antitrust laws offer the opportunity to satisfy farmer expectations more completely. Greater judicial recognition of the limits of economic theory and the existence of power imbalances within markets, especially in light of legislative policies designed to promote the bargaining power of farmers, presents the opportunity to establish an agrarian-specific antitrust analysis.

#### Their authors say that preventing future mergers are distinct from breaking up existing ones

1AC Tam and Bielskis 21, Kristen, BA, Environmental Science Policy, University of California, Los Angeles, Olivia, BA, Political Science & Human Biology and Society, University of California, Los Angeles, "Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement," 2021-04-01, <https://escholarship.org/uc/item/0m16g2r5>

The growing consolidation of America’s agriculture industry is alarming and poses a continuous threat to the expansion and transition to regenerative farming practices. The DOJ, FTC and the Courts have embraced Robert Bork’s “consumer welfare standard” philosophy and employ stricter standards to prove antitrust injury, allowing more consolidation to occur in the agriculture industry. These conglomerates have increased market prices,112 and in the long run, are implementing farming practices that are destroying the soil and security of America to produce its own food. There are more small and medium sized farms that implement regenerative practices such as applying manure and organic fertilizers. In order to expand the implementation of regenerative practices, large operations need to be broken down and further prevented from forming. Ultimately, allowing merges to occur and limiting regulation on the current marketplace by the Courts and federal agencies is harming consumers, farmers, and the government.

#### And courts won’t want to absent a mandate (KU YELLOW)

Bryzyski, 19

[Paul, Duke University School of Law, J.D. expected 2019, Collateral Damage: Private Merger Lawsuits in the Wake of Section 2’s Contraction, Duke Law Review, 68:April, <https://dlj.law.duke.edu/2019/04/collateraldamage/>, sh]

The Court should overrule Cargill and reconsider the antitrust injury doctrine for private merger lawsuits. In Cargill, the majority failed to respond to Justice Stevens’ criticism of the majority’s focus on the post-merger behavior. Up until consummation, a merger represents the height of cooperative, or collusive, behavior. Horizontal mergers are, at their core, decisions to completely agree on prices, output, and market division, all of which are separately illegal under section 1 of the Sherman Act. [185] So why focus totally on the post-merger conduct? If market concentration in the U.S. is reaching dangerous levels, [186] the goal should be to review the competitive merits of a given merger and not be overly concerned with procedural technicalities. Having identified the problem posed by the interaction of the antitrust injury doctrine and section 2, it is time to begin thinking about a way forward. A few possibilities are contemplated below. One way to review the merits of more mergers is to resurrect Justice Stevens’ dissent in Cargill. Recall that his approach asks the reviewing court to do a first pass of the merger itself. [187] Under such an approach, if there is a “reasonable probability” that competition will be injured by the merger, then “there is a reasonable probability that a competitor of the merging firms will suffer some corresponding harm in due course.” [188] The specific harm resulting from the merger could be conceptualized as the loss of the opportunity to compete with one’s rivals in a competitive marketplace. Alternatively, if a merger causes a rival firm to adjust its business operations to account for a new firm, the concrete harm to the rival could be the change in operations that the merger induced. In the context of vertical mergers, like in SureShot, another option is to create an exception to the no-duty-to-deal rule for circumstances in which the rival gained its anticompetitive advantage through an illegal merger. Because it is axiomatic that possession of monopoly power is permissible when gained “as a consequence of a superior product, business acumen, or historic accident,” [189] then monopoly power achieved or maintained through a competition-destroying vertical merger falls outside of those categories and warrants a specific exception to the general no-duty-to-deal rule. In suggesting that the Court overturn a thirty-year-old precedent, it is necessary to address the question of stare decisis. Although cases should not be overruled simply because they were wrongly decided, this case presents an ideal candidate for reconsideration. The considerations for overruling prior decisions, according to Planned Parenthood v. Casey, [190] are: (1) whether there has been a dramatic change in factual circumstances; (2) whether a development in “related principles of law” necessitates a change; (3) whether the previous rule has become unworkable; and (4) whether there has been widespread reliance on the old rule, such that a change would cause “special hardship.” [191] The factual realities of mergers and acquisitions have changed since Cargill. [192] There is now an additional thirty years of empirical evidence suggesting that mergers should be treated more skeptically. The old Chicago School assumptions about efficiency returns have not been borne out in the data. [193] In the past, a prevailing assumption motivating skepticism of merger challenges was the fear of chilling efficient integration. But empirical data indicates that those fears are overblown. [194] Moreover, there is simply more market concentration in the United States than there was 1986, and the FTC and DOJ have more on their plates. [195] These factual realities support revisiting Cargill. Part III discussed the doctrinal narrowing of section 2, which is a “related principle[] of law.” [196] It is unclear whether, in the wake of Aspen Skiing, the Court in Cargill believed that section 2 jurisprudence would take a different path. Perhaps not. But regardless, section 2 has fundamentally changed in a way that has bearing on the Cargill framework for antitrust injury. This change provides support for revisiting the decision. Whether the Cargill framework has become practically unworkable depends on one’s view of the virtues of private lawsuits challenging potentially anticompetitive mergers. For those who are distrustful of private attorneys general, there might not be a problem with the status quo. That said, the Clayton Act explicitly provides for private enforcement of the antitrust laws, including laws preventing illegal acquisitions. [197] While the courts certainly can, and do, interpret statutes in ways that balance a host of atextual concerns, they are simply not authorized to read explicit provisions out of a statute’s text. [198] Cargill’s focus on post-merger conduct has become practically unworkable because it creates an insurmountable standard for a private right of action that contemplates relief for “any” injured person. [199] It is difficult to imagine how reversing Cargill would result in exceptional hardship for any firm. Antitrust injury requirements are procedural hurdles for private plaintiffs to get into court. So, to the extent these rules influence firms’ primary conduct, they do so only as part of the calculus in assessing litigation risk associated with pursuing a merger. In this sense, traditional reliance interests are not implicated because firms have not conformed their behavior around any substantive rule. Moreover, if the new antitrust injury rule was to be applied retroactively to mergers already consummated, the remedy for any successful litigation would be damages. Courts are reluctant to undo a merger after the fact. [200] Finally, stare decisis applies with less force in antitrust. [201] The Court has been willing to overturn antitrust decisions even if they are much older than Cargill in recognition that the economic assumptions underlying the previous decisions no longer hold up. [202] Mergers should be no different, and thus Cargill should be overruled.

#### “Adoption” is distinct from implementation

Henderson 16 (THELTON E. HENDERSON, United States District Judge. Opinion in Emma C. v. Eastin, 2016 U.S. Dist. LEXIS 82077, Court: California Northern District Court, Date: June 23, 2016, Lexis, date accessed 9/30/21)

The Court finds itself in the undesirable, but sometimes necessary, position of interpreting language that was not drafted by the Court, but rather was drafted by the parties and approved by the Court. Therefore, the Court does not have any information - besides the parties' arguments at the June 13, 2016 hearing - as to the intent behind the provision at issue. That being said, the Court is inclined to agree with Plaintiffs' interpretation that the "thirty days advance notice" was intended to mean 30 days prior to formalization or adoption,2 not implementation, of statewide monitoring system changes that would be applied to the District. Plaintiffs' interpretation is the only one that makes sense when considering the paragraphs following the "thirty days" provision in the Fifth Joint Statement - namely, that after CDE gives its notice, Plaintiffs and the District make objections within 21 days; then if necessary, the parties engage in what can be an extensive meet-and-confer process, the Monitor makes determinations [\*11] if necessary, and the parties engage in motion practice before the Court if necessary. Fifth Joint Stmt. at 9-10. CDE's interpretation would not allow the parties sufficient time to engage in this process.

#### There are clear legal designations

Ohio Board of Tax Appeals 7 (Linda S. Hanna, Appellant, vs. Wood County Board of Revision and the Wood County Auditor, Appellees. State of Ohio -- Board of Tax Appeals, November 16, 2007, CASE NO. 2006-B-1117 (REAL PROPERTY TAX) Lexis, date accessed 9/30/21)

Furthermore, the effective date of the appraisal relied upon by the appellant is twelve months subsequent to the tax lien date in issue. In Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision (1996), 75 Ohio St.3d 552, 1996 Ohio 456, 664 N.E.2d 922, the Supreme Court found this board's reliance upon appraisal evidence which did not opine value for the pertinent tax lien date to be improper:

"We [\*6] reverse the BTA's decision and remand this matter to the BTA because the BTA based its decision on evidence that did not value the property as of the tax lien date.

"R.C. 5715.19(A)(1)(d) authorizes a property owner to file complaints with a board of revision against determinations made by the county auditor concerning the true value of the owner's property. According to R.C. 5715.19(D), 'the determination of any such complaint shall relate back to the date when the lien for taxes \*\*\* for the current year attached \*\*\*.' The lien for taxes for each year attaches on the first day of January. R.C. 323.11.

"To emphasize the importance of this date, R.C. 5715.01, which authorizes the Tax Commissioner to direct and supervise the assessment of real property for taxation, including adopting rules to that end, states:

"'The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year \*\*\*.'

"The BTA valued the property according to Canitia's opinion of value. However, Canitia did not value the property as of any certain date. According to his testimony, he valued [\*7] the property as of the entire year. To him, the tax lien date was a reflective date, not the valuation date. Thus, the evidence on which the BTA relied for its ultimate decision is unlawful. SFZ Transp., Inc. v. Limbach (1993), 66 Ohio St.3d 602, 1993 Ohio 240, 613 N.E.2d 1037, \*\*\*.

"We emphasize that the BTA '\*\*\* may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision (1981), 66 Ohio St. 2d 398, 422 N.E.2d 846, \*\*\*, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." Id. at 554-555. (Parallel citations omitted.)

#### The plan couldn’t prevent the merger that all their ev decries as bad—Bayer/Monsanto was pharma, chemical, and biotech—not technically an “ag merger” even if it effected ag — meaning their specification of “agricultural” in the plan text means they shot themselves in the foot

Waltz 16 (Emily Waltz is a freelance science journalist specializing in biotech and the business of science. She is a contributing editor at the tech magazine IEEE Spectrum, and has been writing for the journal Nature Biotechnology for over 16 years. She has also written for Nature, Scientific American, Discover, Outside and The New York Times. “Bayer bids $66 billion for Monsanto” , <https://www.nature.com/articles/nbt1016-1003> , 11 October 2016, date accessed 1/3/22)

German pharma and chemical giant Bayer agreed to buy US biotech seed developer Monsanto for a whopping $66 billion, the companies announced September 14. The deal marks the third high-profile consolidation in the agbiotech industry in the last year. It follows a proposed merger between Midland, Michigan–based Dow Chemical and Wilmington, Delaware–based DuPont worth a combined $130 billion, and a $43-billion acquisition of Syngenta by China National Chemical, a state-run chemical giant in Beijing. All three deals face antitrust reviews in multiple countries. Regulators will assess whether the consolidations will unfairly lead to higher prices for farmers and consumers, and any chilling effects on innovation. In the Bayer–Monsanto deal, the companies aim to pair Leverkusen-based Bayer's crop protection business with St. Louis–based Monsanto's seeds and traits portfolio. Bayer is best known, however, as the maker of aspirin, Alka Seltzer and other healthcare products—a business that represented 67% of the company's sales in 2015. Consuming Monsanto will reshape Bayer's focus, putting crop science on an equal footing with healthcare in terms of projected sales, according to the company. That might pull resources away from Bayer's pharmaceutical research pipeline, weakening its capacity to grow in that sector, analysts say. Bayer's offer represents a 44% premium to Monsanto's share price before takeover talk was first reported in May, and is the largest acquisition of 2016 in any sector. Bayer said it would pay Monsanto $2 billion if the deal falls apart on antitrust grounds.

#### Every 1AC card that says mergers are bad also condemns acquisitions—Cargill itself was about an acquisition! Here’s their solvency advocate (KU YELLOW)

Lauck, 99

[Jon ,Editor in Chief, Minnesota Journal of Global Trade; Ph.D., MA, University of Iowa; BS, South Dakota State University. Jon TOWARD AN AGRARIAN ANTITRUST: A NEW DIRECTION FOR AGRICULTURAL LAW, 75 N.D. L. Rev. 449, North Dakota Law Review, 1999, LN, sh]

While an agrarian theory of antitrust has applications in all areas of antitrust law, it has particular relevance in merger analysis. The Sherman Act was motivated by a concern about mergers and their impact on levels of economic concentration. 304 Twenty-four years later, similar concerns motivated passage of the Clayton Act, 305 which embraced merger regulation as a method of stopping economic concentration in its "incipiency [\*497] before consummation." 306 Still concerned with concentration levels and the frequency of mergers that compounded concentration, Congress passed the Celler-Kefauver Antitrust Amendments in 1950, prohibiting corporate mergers the effect of which "may be to substantially lessen competition." 307 Congress again intended the merger provisions to serve as a "prophylactic measure" 308 which could "cope with monopolistic tendencies in their incipiency," 309 choosing to focus on "probable harm [to competition] rather than actual harm." 310 The Congressional mood is even reflected in the title of the law, a self-proclaimed "Antimerger Act." In the 1960s, courts met Congressional hopes for a restrictive merger policy. In United States v. Philadelphia National Bank, 311 for example, a merger was found to be presumptively illegal if it caused a "significant increase in [market] concentration." 312 In United States v. Von's Grocery, 313 the Supreme Court disallowed a merger between firms that would have had a mere 7.5 percent post-merger market share. 314 In Von's, the Court sought to "prevent economic concentration in the American economy by keeping a large number of small competitors in business." 315 In subsequent years, after the adoption of the merger guidelines by the Department of Justice, merger cases continued to focus on structural considerations such as market share. 316Link to the text of the note Unlike the restrictive merger policies of an earlier generation of cases, however, the current inquiry does not end with the consideration of structural factors. Enforcement agencies now extend their analysis beyond concentration levels, weighing a "variety of economic factors" which could determine the anticompetitive effect of a merger. 317 Such [\*498] factors include the potential efficiencies generated by the newly- combined firm 318 and the ease of entry into the merged firm's market. 319 Enforcement agencies do not adopt unique considerations for agribusiness mergers. 320Link to the text of the note Despite greater sophistication in recent years, the economic analysis of mergers has never overcome the shortcomings outlined by Derek Bok in the earliest stages of commentary on section 7 of the Clayton Act. In 1960, Bok maintained that the "the problem of indeterminateness," discussed earlier, would undermine any attempts to assess the probable competitive consequences of a merger. 321 The commentary of two of the foremost scholars in the field of antitrust law indicates the subjectivity, randomness, and pure chance of economic analysis in the context of conglomerate mergers, with no apparent irony: Th[e indeterminacy] problem could be moderated by the use of presumptions. One could, for example, adopt the presumptions earlier set forth. Yet one might remain skeptical; presumptions will not simplify the matter if rebutting economic evidence is allowed. On the other hand, conclusive presumptions could cover far too much. That result might not be cause for great concern if such mergers never benefitted the economy, but they sometimes do. 322Link to the text of the note [\*499] More recent commentators have recognized this difficulty with particular reference to the efficiencies defense in merger cases. 323 Despite alleged advancements in economic theory 324 and the ubiquity of "efficiency" as a justification for business activities, 325 it is still extremely difficult to predict the existence of efficiencies in a merged firm. As FTC chairman Robert Pitofsky has noted, the efficiencies defense is "easy to assert and sometimes difficult to disprove." 326 One court has termed efficiency claims by defendants in merger cases "speculative self-serving assertions." 327 Doubts about the competitive consequences of mergers and efficiency claims and the problems of proof both present have even crept into the analysis of Chicago school stalwarts such as George Stigler, Richard Posner and Robert Bork. 328 The most reliable source of doubt about efficiency claims is the poor economic record of mergers. 329 The largest merger of the 1980s, for example, was recently [\*500] reversed, earning a high rank in "the century's pantheon of financial ignominy." 330Link to the text of the note Debating the economic effects of mergers also crowds out the consideration of other policies undergirding the anti-merger provisions of the antitrust laws. In passing the Celler-Kefauver Amendment in 1950, Congressional action was premised on concerns about economic concentration and the tendency of mergers to further increase concentration. 331 Congress was concerned about the effects of concentration on personal freedoms, the disappearance of small businesses and the impact of concentrated economic power on democratic institutions, 332 and "efficiency was of small concern." 333 Thus, failing to consider non-economic concerns undermines the broader purposes and concerns of the statute. 334 The prominence of these considerations led courts in [\*501] the 1960s and 1970s to condemn mergers, despite possible efficiencies. 335 Judicial deference to Congressional concerns about mergers contributing to economic concentration was wise, especially in light of the inability to confirm or deny the presence of economic efficiencies. A merger analysis that devolves into irresolvable economic theorizing and fails to weigh structural considerations undermines agrarian antitrust. Failing to consider concentration levels per se diminishes the importance of the overall bargaining context. The calculation of economic outcomes, which often involves solely a debate over the potential for price increases, and the consideration of efficiencies also indicates a decidedly pro-consumer bias in merger analysis, offering little or no opportunity to consider the negative impact of a merger on suppliers. A possible component of an efficiencies defense, for example, is that a merged firm will be able to maintain "bargaining advantages" over other economic actors. 336 Such an argument implicitly recognizes that those who sell to a large firm resulting from a merger will often be at a disadvantage, but it fails to consider the impact on suppliers as an autonomous factor in merger analysis. A stricter merger policy in the past could have made a critical difference to the industrial structure of farm product buyers. 337 In the early part of the century, the food industry was defined by numerous small firms that started to grow larger and more powerful in the 1920s, partly through merger. 338 In the postwar period, concentration concerns [\*502] became more pronounced as the number of food manufacturers dropped by over fifty percent from 1947 to 1972. 339 Then, in the mid-1960s, "an avalanche of mergers broke loose in the U.S. economy" referred to as "merger mania," 340 and from 1971-1975 food-tobacco manufacturing firms made twenty-five percent of all large manufacturing acquisitions. 341 A.C. Hoffman, an early pioneer in the field of competition in the food industries, claimed that "never before in the history of capitalism [had] such great aggregations of economic power been created." 342 The abandonment of Warren-era merger policies by enforcement agencies and the courts, which "virtually [stopped] all but very small mergers by the leading ten food chains," 343 contributed to the "record volume of food manufacturing acquisitions" in the 1980s. 344 One study concluded that two-thirds of the increase in [\*503] concentration levels during the 1980s could be explained by mergers and acquisitions, many of which violated the Department of Justice's own merger guidelines. 345Link to the text of the note Throughout this period, very little attention was paid to farmer organization in merger analysis. In Cargill v. Monfort, a major 1980s Supreme Court case involving the merger of the second- and third-largest beef packers, the issue of supplier interests was not even considered. 346 The controversy stemmed from a lawsuit brought by Monfort against Cargill, the second-largest beef packer, which was attempting to acquire Spencer Beef, then the third-largest beef packer. 347 Monfort argued that the resulting firm would be able to price in a manner that economically undermined Monfort. 348 The case thus focused on the legitimacy of such an antitrust "injury." 349 The District Court and the Court of Appeals accepted Monfort's argument that Cargill would undercut Monfort's prices to retailers and outbid Monfort for cattle from suppliers, causing a "price-cost squeeze" which would injure Monfort. 350 The Supreme Court, however, cited case law requiring that the injury suffered by Monfort as a result of the merger actually derive from a violation of the antitrust laws, not simply the merger itself, and reversed the lower court holdings. 351 Such a holding is hardly [\*504] remarkable. The remarkable aspect of the case is that suppliers of cattle to the newly-merged firm did not protest the merger. More recently, after a decade of agribusiness consolidation and farmer concerns about the concentration issue, an antitrust theory invoking agrarian concerns was not employed by farmers or any other parties involved in a merger of major cereal companies. 352 Suppliers should start protesting. One possible approach would be to argue for a return to the Philadelphia National Bank (PNB) standard for mergers in the agribusiness sector. In PNB, the Supreme Court stopped the merger of the second- and third-largest banks in Philadelphia, holding that the combination of large firms in a market created an inferential violation of section 7. 353 Such a presumption, the court held, was particularly important in an economic sector where concentration was increasing. 354 A similar presumption in the case of agribusiness mergers would address the historic and contemporary concerns of farmers with the concentrated power of their buyers, a consideration particularly important after the growth of concentration in the last decade. A presumption would begin to compensate for overlooking the impact on suppliers in recent cases such as Cargill v. Monfort. Moreover, the presumption would tip the balance in favor of farmers in merger cases which are prone to inconclusive determinations about economic effects, more faithfully addressing Congressional concerns about economic concentration and the bargaining power of farmers. 355 C. Applying the Theory: The Case of the Cargill-Continental Merger In the midst of the concerns over concentration in agriculture, Cargill, Inc., the largest privately-owned company in the United States, [\*505] announced plans to acquire the grain trading operations of Continental Grain Company, described as its "chief rival." 356 The purchase, which is estimated to cost as much as $ 1 billion, would give Cargill an additional six export terminals, twenty-seven river terminals and thirty-two country elevators, increasing its total to three hundred grain facilities in the United States. 357 As a result, Cargill would handle forty-two percent of corn exports, one-third of soybean exports and twenty percent of wheat exports. 358 The deal also increases Cargill's total storage capacity to 566 million bushels, ahead of Archer-Daniels-Midland's 464 million bushels. 359Link to the text of the note Many farmers and farm advocates have voiced concerns over the merger. Secretary of Agriculture Dan Glickman wrote to the Department of Justice and indicated his "significant antitrust concerns" with the deal. 360 Senator Charles Grassley (R-IA) has noted that "many farmers fear that further concentration in agribusiness will significantly diminish competition from companies that buy, store and trade their commodities." 361 Attorney General Mark Barnett of South Dakota and Attorney General Mike Hatch of Minnesota both opposed the merger. General Hatch argued that "antitrust law has not fulfilled its promise to prevent excessive market concentration." 362Link to the text of the note Cargill responded to the expressed concerns by arguing that the merger is beneficial. Cargill's President of North American grain operations argued that the merger "will allow us to better serve producers in terms of how we buy grain, how we load and transport grain and how we sell grain." 363 Another spokesperson argued that the merger will "allow us to take costs out of the system and provide better service at lower costs." 364 Focusing on consumer effects, the chairman of Cargill argues that the merger "will extend farmers' reach into new markets and [\*506] improve service to a world of increasingly demanding consumers." 365 The chief executive of Continental espoused the benefits that the two companies combined assets would have for farmers and emphasized that "what's important for farmers is to have the most efficiency." 366 The invocation of consumer impacts and efficiency considerations shows that officials for Cargill and Continental have anticipated the inquiries that are common in current merger policy. In July of 1999, the DOJ set forth its "Proposed Final Judgment" in the Cargill-Continental merger case. 367 The DOJ took note of certain "captive draw areas" where farmers were forced to sell almost exclusively to Cargill or Continental. 368 Corn and soybean farmers in North Dakota, South Dakota, Minnesota, Nebraska, and Iowa, for example, must rely on competition in the Pacific Northwest between Cargill's port facility in Seattle and Continental's port facility in Tacoma. 369 DOJ quite obviously stopped Cargill's acquisition of Continental's facilities in areas such as the Pacific Northwest where the acquisition would leave only one major grain buyer. 370 In short, DOJ prevented duopoly from devolving into monopoly. While recognizing a monopsonistic consequence of the merger and preventing complete monopsonization of some grain buying markets, the DOJ applied a very simplified and generic merger analysis. It failed to recognize the great potential for cooperation and collusion in heavily concentrated markets. It failed to recognize the unique bargaining power disparity between disorganized farmers and large-scale agribusiness firms. And it failed to respect a series of statutes passed by Congress and state legislatures concerned about the concentration problem in agricultural markets. DOJ's passivity has triggered pressure from farm groups and farm-state legislators for a challenge to the merger by state attorneys general. 371Link to the text of the note [\*507] If state attorneys general advance an agrarian antitrust theory when challenging the Cargill-Continental merger they could scuttle the deal. The concentration factor would weigh heavily against the merger, given that Cargill and Continental occupy the top two positions in the export market, Cargill with twenty percent and Continental with fifteen percent. Plaintiffs could appeal to the Congressional intent to stave off concentration by preventing the merger of large firms. Blocking concentration trends in their incipiency would also avoid the puzzle of oligopoly. If firm sophistication were a factor in the analysis, Cargill would occupy the highest end of the spectrum, given its sheer size and its involvement in many different economic sectors. 372 In terms of information, Cargill commands an international network of agents in an industry known for extreme secrecy. 373 Further, the merger would give Cargill control of a large percentage of the Chicago Board of Trade's 79-million-bushel storage capacity for wheat, corn and soybeans, giving it great influence over an important source of price information for farm goods. 374Link to the text of the note The Cargill-Continental merger presents the opportunity to seek a new judicial merger policy that applies to agribusinesses. Plaintiffs could seek a ruling that such a merger among major agricultural firms that buy farm products is presumptively illegal, appealing to older cases such as Philadelphia National Bank. Doing so would give structure its appropriate weight as a consideration in antitrust cases. Instead of accepting a school of economic analysis that tends to find most corporate activity competitive and efficient, a court could recognize the serious limits on economic knowledge and prediction. It could weigh more heavily developing theories of monopsony and sophistication as rationales for finding large agribusiness mergers presumptively illegal, more faithfully honoring Congressional intentions to err on the side of [\*508] decentralization in merger cases. Furthermore, such a judicial policy would recognize the persistent Congressional imperative of promoting a more balanced bargaining relationship between farmers and the buyers of their products. Judicial acceptance of such an argument is more likely given that concentration concerns have historically been expressed in merger law. 375 Merger policy thus provides the most accessible outlet for addressing concerns about concentration in agricultural markets and, following Congressional concerns, addresses the problem before it worsens. IV. CONCLUSION Farmers actively sought antimonopoly legislation in the late nineteenth century and have continued to support its application to the present day. Due to the recent judicial embrace of certain economic theories, however, the antitrust laws have failed to meet their expectations. More recent developments in the interpretation of the antitrust laws offer the opportunity to satisfy farmer expectations more completely. Greater judicial recognition of the limits of economic theory and the existence of power imbalances within markets, especially in light of legislative policies designed to promote the bargaining power of farmers, presents the opportunity to establish an agrarian-specific antitrust analysis.

#### I’m not going to reinvent the wheel and read all these cards but I’ll insert the rest (KU YELLOW)

Bryzyski, 19

[Paul, Duke University School of Law, J.D. expected 2019, Collateral Damage: Private Merger Lawsuits in the Wake of Section 2’s Contraction, Duke Law Review, 68:April, <https://dlj.law.duke.edu/2019/04/collateraldamage/>, sh]

The Court should overrule Cargill and reconsider the antitrust injury doctrine for private merger lawsuits. In Cargill, the majority failed to respond to Justice Stevens’ criticism of the majority’s focus on the post-merger behavior. Up until consummation, a merger represents the height of cooperative, or collusive, behavior. Horizontal mergers are, at their core, decisions to completely agree on prices, output, and market division, all of which are separately illegal under section 1 of the Sherman Act. [185] So why focus totally on the post-merger conduct? If market concentration in the U.S. is reaching dangerous levels, [186] the goal should be to review the competitive merits of a given merger and not be overly concerned with procedural technicalities. Having identified the problem posed by the interaction of the antitrust injury doctrine and section 2, it is time to begin thinking about a way forward. A few possibilities are contemplated below. One way to review the merits of more mergers is to resurrect Justice Stevens’ dissent in Cargill. Recall that his approach asks the reviewing court to do a first pass of the merger itself. [187] Under such an approach, if there is a “reasonable probability” that competition will be injured by the merger, then “there is a reasonable probability that a competitor of the merging firms will suffer some corresponding harm in due course.” [188] The specific harm resulting from the merger could be conceptualized as the loss of the opportunity to compete with one’s rivals in a competitive marketplace. Alternatively, if a merger causes a rival firm to adjust its business operations to account for a new firm, the concrete harm to the rival could be the change in operations that the merger induced. In the context of vertical mergers, like in SureShot, another option is to create an exception to the no-duty-to-deal rule for circumstances in which the rival gained its anticompetitive advantage through an illegal merger. Because it is axiomatic that possession of monopoly power is permissible when gained “as a consequence of a superior product, business acumen, or historic accident,” [189] then monopoly power achieved or maintained through a competition-destroying vertical merger falls outside of those categories and warrants a specific exception to the general no-duty-to-deal rule. In suggesting that the Court overturn a thirty-year-old precedent, it is necessary to address the question of stare decisis. Although cases should not be overruled simply because they were wrongly decided, this case presents an ideal candidate for reconsideration. The considerations for overruling prior decisions, according to Planned Parenthood v. Casey, [190] are: (1) whether there has been a dramatic change in factual circumstances; (2) whether a development in “related principles of law” necessitates a change; (3) whether the previous rule has become unworkable; and (4) whether there has been widespread reliance on the old rule, such that a change would cause “special hardship.” [191] The factual realities of mergers and acquisitions have changed since Cargill. [192] There is now an additional thirty years of empirical evidence suggesting that mergers should be treated more skeptically. The old Chicago School assumptions about efficiency returns have not been borne out in the data. [193] In the past, a prevailing assumption motivating skepticism of merger challenges was the fear of chilling efficient integration. But empirical data indicates that those fears are overblown. [194] Moreover, there is simply more market concentration in the United States than there was 1986, and the FTC and DOJ have more on their plates. [195] These factual realities support revisiting Cargill. Part III discussed the doctrinal narrowing of section 2, which is a “related principle[] of law.” [196] It is unclear whether, in the wake of Aspen Skiing, the Court in Cargill believed that section 2 jurisprudence would take a different path. Perhaps not. But regardless, section 2 has fundamentally changed in a way that has bearing on the Cargill framework for antitrust injury. This change provides support for revisiting the decision. Whether the Cargill framework has become practically unworkable depends on one’s view of the virtues of private lawsuits challenging potentially anticompetitive mergers. For those who are distrustful of private attorneys general, there might not be a problem with the status quo. That said, the Clayton Act explicitly provides for private enforcement of the antitrust laws, including laws preventing illegal acquisitions. [197] While the courts certainly can, and do, interpret statutes in ways that balance a host of atextual concerns, they are simply not authorized to read explicit provisions out of a statute’s text. [198] Cargill’s focus on post-merger conduct has become practically unworkable because it creates an insurmountable standard for a private right of action that contemplates relief for “any” injured person. [199] It is difficult to imagine how reversing Cargill would result in exceptional hardship for any firm. Antitrust injury requirements are procedural hurdles for private plaintiffs to get into court. So, to the extent these rules influence firms’ primary conduct, they do so only as part of the calculus in assessing litigation risk associated with pursuing a merger. In this sense, traditional reliance interests are not implicated because firms have not conformed their behavior around any substantive rule. Moreover, if the new antitrust injury rule was to be applied retroactively to mergers already consummated, the remedy for any successful litigation would be damages. Courts are reluctant to undo a merger after the fact. [200] Finally, stare decisis applies with less force in antitrust. [201] The Court has been willing to overturn antitrust decisions even if they are much older than Cargill in recognition that the economic assumptions underlying the previous decisions no longer hold up. [202] Mergers should be no different, and thus Cargill should be overruled.

Judge and Belkin 2020

[Patty, Iowa Lt. Governor and Iowa Secretary of Agriculture and serves currently as Co-Chair of Focus On Rural America, and Aaron, Director, Take Back the Court, “The Supreme Court Has Undermined Iowa’s Small Farms and Rural Communities”, <https://static1.squarespace.com/static/5ce33e8da6bbec0001ea9543/t/5e28472acbf4145143979997/1579697963585/Supreme+Court+Has+Undermined+Iowa%27s+Small+Farms.pdf>]

Federal courts have allowed large corporations to consolidate near-monopoly control over agricultural markets After a half century of allowing PSA to function as intended, the Supreme Court as well as lower federal courts shifted gears in the 1970s and 1980s and issued a series of pro-business rulings that significantly weakened the law. The courts effectively drove small farmers out of business by subverting the PSA so as to allow large corporations to achieve monopoly control over agricultural markets. In turn, monopoly control has enabled large corporate buyers to dictate prices they pay to small farmers for livestock and crops. In 1986, the Supreme Court upheld the merger of the second- and third-largest meatpackers in the nation in Cargill, Inc. v. Montfort of Colorado, Inc., and that ruling paved the way for other corporate consolidations that devastated small farms.40 At the time of the lawsuit, Cargill was the fifth-largest meatpacking company in the nation. Cargill challenged a proposed merger between two larger rivals on the grounds that the merged company would be able to use its market power to artificially lower prices to drive out competition.41 The Supreme Court declined to address the effect that the merger would have on small farmers, however, and focused instead on the impact on competing meatpacking firms.42 The Court held that the proposed merger did not “constitute a threat of antitrust injury,” because “antitrust laws do not protect small businesses from the loss of profits due to continued competition.” 43 The Supreme Court’s pro-business framing in Cargill opened the door for additional mergers in the meatpacking industry, and just two years after the decision, the market share of the four largest firms was 67 percent, an increase of 12 percent.44 In the aftermath of the Cargill decision, the Department of Justice was much less likely to bring similar cases to court, so the industry dramatically merged in response. A study analyzing the effects of these mergers found that the largest firms together “paid significantly lower prices for fed cattle” than their competitors.45 Two years after the Supreme Court reasoned that loss of profit due to decreased competition in a market did not constitute an antitrust injury, the CEO of a large meatpacking corporation told the New York Times that consolidation was not bad for the industry because “if we could control cattle prices, the feeders wouldn’t be making as much money as they are now and the money would be going into our pockets instead.” 46 Lower federal courts, like the Supreme Court, have tilted the playing field in favor of agribusiness and against small farmers by upholding corporate justifications for consolidation when federal agencies attempt to block mergers. In 1976, the Ninth Circuit held that a meatpacking corporation’s acquisition of a livestock purchasing company did not violate the PSA.47 The USDA regulation under consideration banned corporations from owning both a livestock packer and dealer. To uphold the regulation, the court would have had to conclude that such a practice was the type of unfair activity prohibited by the PSA.48 The court overturned the FDA regulation, however, by ruling that the Act only prohibited joint ownership of a packer and dealer if the USDA could establish that “the conduct in question is likely to produce” a monopoly.49 Further limiting the USDA’s discretion, the court defined an unfair trade practice likely to produce a monopoly as one that would result in the actual elimination of a buyer from the market.50 The Ninth Circuit’s opinion was cited by district courts in the early 2000s, as judges continued to uphold corporate justifications for anticompetitive practices. In 2004, a district court in Alabama held that captive supply transactions (a type of vertical integration in which livestock are pledged to a specific meatpacker prior to slaughter) are justified as a legitimate business interest, and are not prohibited by the PSA.51 Overturning a jury award for over one billion dollars in damages to the plaintiff cattle farmers, the court ruled that the evidence was not sufficient to prove that a large meatpacking corporation’s use of captive supplies caused prices to decrease.52 The use of captive supplies, the court reasoned, was justified by the meatpacker’s need for an efficient and reliable supply of cattle, and by the fact that competing meatpacking corporations also engaged in captive supply transactions.53 As a result of the court’s decision, cattle farmers effectively were forced to enter into agreements to sell cattle at lower prices than would have been offered in a competitive market. Although captive supply transactions clearly decrease competition, the court held that the practice was not a violation of the PSA, reasoning tautologically that the Act only prohibited captive supply if it was an “unfair practice,” and that since it was not illegal, it did not violate the Act.54 In a similar case in Virginia, a district court held that a pork packing corporation’s acquisition of hog producers was not a violation of the PSA because the integration was motivated by efficiency rather than a desire to manipulate the market.55 The court acknowledged that the “largest pork packer in the world” “caused some financial hardship” to hog farmers by not purchasing hogs on a competitive market, but held that an anticompetitive effect was not a violation of the PSA.56 Finding no evidence that the corporation intended to manipulate the hog market, the court construed the Act to prevent only collusion between competitors, regardless of collusion’s impact.57 Federal courts have been sympathetic to corporations’ arguments about efficiency and other business needs, but such arguments are inconsistent with economic data. Courts have reasoned that the integration of agricultural markets is justified by meatpackers’ legitimate interest in having access to a steady supply of cattle, for example. But data from the 1980s, prior to the rise of captive supply transactions in the beef industry, show that meatpacking companies were able to maintain a reliable supply of cattle.58 Federal courts have ignored the underlying purpose of unfair practices, to control the market in order to force suppliers to accept lower prices, and have failed to assess whether justifications offered by corporations are legitimate rather than mere pretext. Though the PSA and other antitrust statutes create broad prohibitions on unfair trade practices, the consolidation of agricultural markets has gone largely unchallenged by federal agencies, as Federal Courts have sided with corporate interests while ignoring the impact that mergers of the largest agricultural corporations have had on small farmers. Federal agencies are authorized to investigate and block corporate mergers to prevent anti-competitive monopolies in the agricultural sector, but the Supreme Court and lower federal courts have upheld mergers that the agency sought to block.59 Over the past generation, courts have interpreted the PSA to the benefit of large corporations by allowing horizontal and vertical integration of the agriculture industry, by limiting the extent to which the USDA can define anticompetitive practices as unfair under the Act, and by failing to extend the protections of the PSA to contracts between small farmers and large agricultural corporations. Federal courts’ framing of antitrust regulations from the perspective of a merger’s effect on competitors clearly misses the anticompetitive effects of market consolidation on small farmers. Predictably, pro-business rulings have allowed large agricultural firms to merge, and the growth and consolidation of large corporations has, in turn, corresponded with a loss of power and profit for small farmers.60 Recent studies show that four companies control 83 percent of the beef industry, 66 percent of the pork industry, and 55 percent of the poultry industry.61 Consolidation has allowed corporations to remove competition in livestock markets, forcing farmers to accept declining prices. And, consumer prices have increased at the same time that prices paid to farmers have declined. In 2009, the consumer price of pork had risen by 2.1 cents per pound, while the price paid to farmers declined by 14.27 cents per pound.62 Similarly, the cost of retail beef increased by one dollar between 2012 and 2018, but the price paid to beef cattle farmers decreased by 5 percent.63 The average net return per head of cattle fell from 36 dollars between 1981 and 1994, to just 14 dollars between 1995 and 2008.64 Thus, efficiencies in the agricultural sector that followed from corporate consolidation have failed to benefit consumers or small farmers, as excess profits have gone into the pockets of large agricultural firms, even as the courts continue to accept efficiency-based justifications for unfair trade practices.

Hendrickson, et al, 20

[Mary, Phillip Howard, Emily Miller, Douglas Constance, Associate Professor in Rural Sociology at the University of Missouri, Columbia, CONCENTRATION AND ITS IMPACTS

A Special Report to the Family Farm Action Alliance, 11-19-2020, <https://farmactionalliance.org/wp-content/uploads/2020/11/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts-FINAL.pdf>, sh]

Current State of Concentration in Key Products and Market Channels

Recent years have seen continued consolidation in numerous food and agricultural industries. These patterns stem from mergers and acquisitions among formerly separate firms, as well as the exit of other competitors. The result is more concentrated markets, or sales that are dominated by fewer and larger firms. A simple measure of concentration is a ratio, typically the combined share of the top 4 firms, or concentration ratio 4 (CR4). A limitation of the CR4 is that it only measures horizontal changes, and firms are increasingly integrating vertically, such as by acquiring upstream suppliers or downstream customers. In addition, leading firms are rapidly integrating globally, and it is more challenging to measure concentration worldwide than in a single national market.

Merkle et al 21 (Magnus Merkle, School, l of Geosciences, The University of Edinburgh, Institute of Geography, Dominic Moran, Global Academy of Agriculture and Food Security, University of Edinburgh, Frances Warren, School of Geosciences, The University of Edinburgh, Peter Alexander, School of Geosciences, The University of Edinburgh, “How does market power affect the resilience of food supply”, Global Food Security, Vol. 30, September) DB

Food systems are characterised by vertically integrated and increasingly global commodity supply chains. In such systems, regional shocks can quickly cross geographies, causing price spikes and shortages for consumers. Shocks can be caused by a wide range of events, including extreme weather, unsustainable agricultural practices, political crises affecting trade, and pandemics (Bailey et al., 2015; Bakalis et al., 2020; Hamilton et al., 2020). Supply chain configuration can mitigate or exacerbate the associated risks to food supplies. Systems that are resilient have the capacity to maintain food supply in spite of unforeseen disturbances (Tendall et al., 2015). One characteristic of global food supply chains is the concentration of market power, which can emerge from consolidation through mergers and acquisitions assisted by the availability of alternative forms of corporate financing. Power imbalances are manifest in many food supply chain relations (ETC Group, 2015; Hendrickson, 2015; iPES Food, 2017; Renwick, 2012; Swinburn, 2019; Woodall and Shannon, 2018), and a split between corporate ownership and control can create tension between consumer and supplier interests, and those of often-remote shareholders. The power and influence of large companies in the food system has been likened to the role of “keystone species” crucial to the function of ecosystems (Österblom et al., 2015). This ecological analogy leads to the examination of the role of such actors in system resilience. More specifically, how their dominant position affords more or less resilience to other actors and to the overall system. While market concentration and elevated power of individual firms is critically framed in some food system literature, there is little systematic understanding of the effects that market power can have on the resilience of food supply. Literature on indicators of food system resilience (Cabell and Oelofse, 2012; Speranza et al., 2014; Tendall et al., 2015) overlooks the role of market power. Economic literature (Bakucs et al., 2014; McCorriston, 2013; Weldegebriel, 2004) focuses on short-term price movements, without considering resilience or wider adaptive capacity. Most studies either only consider one aspect of market power (e.g. Bakucs et al., 2014 considering market concentration), or else offer no explicit definition of market power (e.g. Woodall and Shannon, 2018). Sexton and Xia (2018) are an exception in considering a range of defined aspects of market power, and their potential effects on agricultural supply chains. Building on economic and socio-ecological systems literatures, we consider how market power affects supply chain resilience to external shocks. We also draw on experience from recent food supply shocks in the UK, a country that is considered to be threatened by “inherent systemic risks”, with 50% of its domestic food sales dependent imports (Benton et al., 2017). The UK also has a recent history of government inquiries into alleged anti-competitive market practices (see CMA, 2019). We outline a differentiated conceptualisation of market power for food system resilience research, and speculate on ways to improve the adaptive capacity of food systems. We first derive working definitions of resilience and market power from the literature. The resilience implications of different dimensions of market power is then analysed, using literature from multiple disciplines and cases from the UK. We end with a reflection on regulatory needs. 2. Resilience and market power The focus on the resilience of food supply arises as a desirable attribute of food systems and concern about food security more generally. This is particularly so when food systems are subject to an increasing array of foreseen and unforeseen shocks. Conceptually, resilience has roots in engineering as well as in ecological literature, which focus on the equilibrium of complex systems and the thresholds that define the boundaries of stable and unstable dynamic systems. Although resilience is defined differently by several disciplines (Thorén, 2014), it is commonly viewed in conjunction with the concept of vulnerability (Nelson et al., 2007). An early definition of system resilience is the dynamic ability of systems to persist in a functional way (Holling, 1973), which can also be termed as the capacity “to continue providing a function over time despite disturbances” (Tendall et al., 2015). Helfgott (2018) suggests specifying this function in terms of resilience of what, to what, for whom, and over what time frame. Following this suggestion, the focus of this study is on the resilience of food supply to external shocks for consumers, over the short to medium time frame. A similar focus on food supply is adopted by Tendall et al. (2015), who define food system resilience as. “the capacity over time of a system and its units at multiple levels, to provide sufficient, appropriate and accessible food to all, in the face of various and even unforeseen disturbances”. Food system resilience has been described as the stability dimension of food security (ibid.). It is also possible to frame system resilience from a perspective of environmental sustainability, or producer livelihoods, which imply a different focus and metrics. Resilience at one end of a supply chain does not always imply resilience at the other points in the chain, and it is important to consider conflicts and trade-offs that can appear (Oliver et al., 2018; Zurek et al., 2020). It is also important to consider larger-scale interactions between consumption, production and ecosystem services, which are all part of the same complex socio-ecological system, hierarchically linked through ecological and economic dependencies and systemic feedback loops (Nyström et al., 2019). A persistently stable food supply is thus underpinned by the sustainability of the whole system. Indicators for resilience in socio-ecological systems include capacity buffers, redundancy, flexibility, diversity, and the right balance between cooperation and autonomy (Cabell and Oelofse, 2012; Speranza et al., 2014). Resilience implies a system's capability to deal with change, namely (1) through system persistence, (2) through incremental system adjustments, or (3) through more fundamental transformational change to maintain a system's function (Doherty et al., 2019). These capacities have been reinterpreted as (1) Robustness to resist disruptions, (2) Recovery, the ability to return to a desired state following disruption, and (3) Reorientation, the ability to change to a different state in order to maintain the function despite the disruption (GFS-FSR, 2019). These three capacities can be conflicting, i.e. a highly robust system might lack capacity to change fundamentally and vice versa (Doherty et al., 2019). Market power refers to the influence of a firm (or a group of colluding firms) over its customers or its suppliers, which increases in less competitive markets (White, 2013). Power can be associated with different and sometimes interrelated causes, including (1) market concentration, for example in the current market for smartphone operating systems largely dominated by two firms, (2) cooperation and collusion between firms, for example in case of an oil oligopoly manipulating oil prices, (3) rigid contracts, for example when a supplier is locked into a contract preventing a change of business partners, (4) exclusive rights or unique products, for example when a firm owns an important patent providing it with a unique technology, or when consumers consistently consider a firm's product more desirable than comparable products by other firms; or (5) infrastructure and size, for example when economies of scale have enabled a firm to grow significantly larger than others, preventing rivals from competing in terms of handling capacity and cost advantage. In each case the extent of actual power and anti-competitive practice can be contested because of data challenges that hamper estimation (Sexton and Xia, 2018; Swinnen and Vandeplas, 2010), and the fact that market concentration indicators are not always indicative of market power (Adajar et al., 2019). Power can be deployed subtly and is difficult to measure as it does not always manifest in the same way. Firms can exercise power for different objectives, including the maintenance of supernormal profits, which is often considered socially detrimental in terms of consumer and producer welfare relative to perfectly competitive markets. In practice, power can enable a variety of outcomes that are tied to questions of accountability, agency, and contracts. In some cases, market power can enable higher levels of consumer welfare (Williamson, 1968). 3. Resilience implications of market power 3.1. Market concentration and vulnerability Market concentration can increase the power of individual firms, as suppliers and customers have fewer alternative firms to do business with. Concentrated markets in the food system include the global agricultural inputs market, where Bayer-Monsanto, Dow-Dupont, ChemChina-Syngenta, and BASF control 70% of the market (DeCarlo, 2018), or the UK retail market, where Tesco, Sainsbury's, Asda, and Morrisons control 67% of the market (KANTAR, 2020). In earlier studies, market concentration has been related to low levels of diversity and redundancy, and thus vulnerability to shocks (e.g. Hendrickson, 2015; Rotz and Fraser, 2015). The rationale is that a disruption hitting one dominant firm, will have more severe consequences for the food system, and low firm diversity is therefore expected to lead to systemic vulnerability. Market concentration at some levels can nevertheless coexist with system (functional) diversity elsewhere. A concentrated retail market, for example, is not necessarily vulnerable to supply disruptions if its upstream supply base remains diversified. Furthermore, a firm can have numerous subsidiaries, contractors, regionally distributed business locations, and functionally independent divisions and operations. Drucker (2010) makes an important distinction in emphasising the difference between economic diversity as “variety of heterogeneous activities comprising an economy at a specific time”, and industrial concentration as “the extent to which the economic activity of an industry or industrial sector is accounted for by one or a few large firms”. Garmestani et al. (2006) highlight that functional richness and functional diversity are central attributes of resilience and these do not necessarily correlate with market concentration. Vulnerability to shocks is associated with homogenous processes that are not robust, have low capacity of recovery, or for reorientation. A lack of diversity on a functional level can impair redundancy and therefore impair resilience (Cabell and Oelofse, 2012). Accordingly, food system resilience assessments need to specifically consider diversity at the functional level rather than only at the level of the market. 3.2. Firm size: a trade-off between infrastructure and flexibility? Power concentrated in fewer larger firms can often imply larger infrastructure and varying flexibility to address shocks. The last UK food security assessment noted that large conglomerates such as Cargill, Archer Daniels Midland and ConAgra help to safeguard supply by managing contracts and providing knowledge, capital, and infrastructure (DEFRA, 2010). This suggests that economies of scale, itself conducive to market power, can be beneficial for the resilience of food supply in terms of providing ability to handle bulk (Garmestani et al., 2006). Size might also be an asset in case of a regional crisis, when access to global infrastructure and strong logistics enable a firm to divert supply between production regions. In contrast, some have argued that large organisational structures can reduce the reactive flexibility to a shock, compared to smaller more diverse actors that are more flexible and reactive when conditions change (Garmestani et al., 2006; Hendrickson, 2015). When the hospitality sector was closed during the Covid-19 pandemic, for example, several small farms swiftly redesigned their business model to supply directly to consumers (Farming UK, 2020). Socio-ecological systems literature considers flexibility as a central prerequisite to be able to deal with changes (Nelson et al., 2007). Size can therefore imply a resilience trade-off between infrastructure and flexibility. Garmestani et al. (2006) suggest that industries with firms of varying sizes (i.e. some are big and some are small) might be the most resilient as they combine both capacities. 3.3. Conflicts between efficiency and resilience Economic theory suggests that reduced competition leads to lower production levels, economic efficiency and welfare, because the profit-maximising quantity in a non-competitive market is lower than in a competitive setting (White, 2013). However, when considering resource extraction and external costs, a less competitive “slower race” might enable more sustainable practices (Crona et al., 2016). Natural resource literature has shown that resource exploitation rates can be lower when competition is reduced (Solow, 1974; Stiglitz, 1976). When it comes to resource depletion and external costs, the advantages of imperfect competition may therefore offset its disadvantages. A similar efficiency vs. resilience trade-off is evident along supply chains. Efficiency, as defined in a competitive market, implies that slack or redundancy is minimal. Capital and other resources are fully employed, leaving little leeway to buffer disruptions. However, the ability to mitigate a shock impact requires some form of leeway, for example financial capacity to offset price fluctuations caused by a disruption in production. If this capacity to mitigate shock impacts results from additional profit margins due to market power, the higher prices for consumers or lower prices for producers could be considered as a resilience ‘insurance premium’ at the expense of sector efficiency. Price-buffering behaviour happens in the potash industry, where the dominant legal cartel has been able to maintain price stability despite frequent supply shocks (Gnutzmann et al., 2019). An illustrative case in the UK food system was the weather-induced Southern European vegetable shortage in 2017, where financial capacity enabled packers and retailers in the UK to maintain the supply of lettuce to consumers by contracting American producers at higher freighting costs (BBC Radio 4, 2018). However, as shown by price transmission research (Lloyd, 2017), a firm may not automatically make use of this buffering ability. McCorriston et al. (2001) as well as Weldegabriel (2004) analysed whether elevated profit mark-ups due to market power generally absorb price fluctuations, and concluded that this depends on assumed demand and supply elasticities. Without knowing firm-specific incentives, price transmission models are therefore ambiguous as to whether elevated profit mark-ups increase the resilience of food supply. 3.4. Costs and benefits of power imbalances Market power for any supply chain actor typically comes at the cost of reduced freedom and autonomy for other supply chain actors. If producers are dependent on a powerful buyer, a large part of their decision-making control is passed on to the buyer, who can now dictate rules and conditions for their business relationship. The impact of power imbalance on food system resilience is completely dependent on the powerful firm. Power can enable firms to act as positive change makers, for example, though the promotion of sustainable production practices (Folke et al., 2019; Rueda et al., 2017) or through the promotion of robustness in agricultural landscapes to better be able to withstand shocks (Macfadyen et al., 2015). Powerful retailers can also shape consumer attitudes and inform about environmental issues associated with certain food, in order to incentivise sustainable production and possibly higher resilience of ecosystems (ibid.). However, without accountability for social or environmental consequences, powerful retailers can be detrimental. An example are the North Sea cod crises of 2006 and 2019, where stocks fell below safe biological levels (MSC, 2019). As retailers diverted to Atlantic cod to offset the domestic shortage, consumers remained unaffected and unaware of the acute ecosystem depletion in the North Sea (Crona et al., 2016). Power in the supply chain structure prevented the price signal from signalling scarcity (Crona et al., 2016; Nyström et al., 2019). The cod crisis is an example for how continued supply at the consumer end can coincide with an undermining of resilience at the individual ecosystem and producer level. It can also be framed as an information failure wherein powerful firms fail to a transmit information about ecological impacts and, by extension, to promote ecosystem resilience. Similarly, if powerful firms systematically withhold information, knowledge and technology, they impair the adaptive capacity of other firms (iPES Food, 2017). Power imbalances can create both winners and losers, as they shift vulnerability to where there is least power in the supply chain. The combination of downstream competition (i.e. competition amongst retailers) with upstream buyer power (i.e. power of retailers towards suppliers), for example, may reduce consumer prices and hence be beneficial to ensure consumer access to food (Swinnen and Vandeplas, 2010; Zhao, 2019), but at the expense of producers who may be exploited (iPES Food, 2017). An example was the BSE crisis in 1996, when UK beef exports were stopped, and domestic beef consumption decreased drastically over concern that eating beef could lead to fatal Creutzfeldt-Jacob Disease. Using their buyer power, UK retailers reduced the prices paid to livestock farmers by twice the level of the decrease in retail prices, taking advantage of a shock to make additional profits at the expense of producers (Competition Commission, 2000; Lloyd et al., 2003). Beef producers were made doubly vulnerable due to the combined effects of BSE and their lack of bargaining power. Suggested indicators for agroecosystem resilience include social self-organisation, calibrated connectedness, global autonomy and local independence (Cabell and Oelofse, 2012). Dependencies, in contrast, reduce the ability of individual firms to act according to their own locally specific knowledge to adapt to changed circumstances (Hendrickson, 2015; iPES Food, 2017). If power imbalances imply low autonomy and reduced ability along the supply chain to react to changes, the net impact of power imbalance on resilience of food supply may be negative. 3.5. Competition vs. cooperation Collusion between firms increases their joint power in a market and is usually regulated by competition authorities to control any exploitative behaviour. In a crisis however, cooperation can increase capacity to maintain food supplies to consumers, because infrastructure, resources, logistics, and knowledge can be shared. Cooperation can enhance resilience, as long as cooperating firms face incentives to act in a benign way. Cases showing how cooperation increases both resilience and efficiency have been found in seafood supply (Nyström et al., 2019), pork supply (Leat and Revoredo-Giha, 2013) and UK retailer supply networks (Duffy and Fearne, 2004). The collaboration-competition tension was also illustrated during the Covid-19 pandemic, when the UK government relaxed competition laws allowing retailers to collaborate to address distribution challenges (UK Government, 2020). Concerns about the fine line between cooperation and collusion have nevertheless been raised (BBC, 2020). Sykuta and Cook (2001) observe that ownership structure of a firm can be a factor in the extent of cooperative contracting. If so, then the question of the distribution of power (i.e. who holds the firm) is an important corollary to resilience outcomes. A comparison of investor-owned and producer-owned firms illustrates how cooperative contracting between producers is more efficient than contracting in which distrust between the parties leads to an incentive to withhold information (ibid.). Producer ownership creates accountability towards producers, which can be an incentive to act in a resilience-promoting way. This was illustrated by a case from the UK milk supply chain in winter 2018, when cold weather conditions interrupted logistics and UK dairy farmers were forced to discard thousands of litres of milk that could not be collected (Perrett, 2018; Yates, 2018). Although this milk did not reach supermarkets, big co-operatives such as Arla continued to pay farmers for their production (ibid.). This decision to support producers is an example for producer risk diversification through cooperation, as Arla is owned by 2500 farmers (Perrett, 2018). However, the line between voluntary cooperation based on trust and involuntary cooperation based on coercion is difficult to determine (Dapiran and Hogarth-Scott, 2003), and power imbalances can prevail in cooperative and competitive systems. Regulatory scrutiny may sometimes find this distinction hard to detect. 4. Regulating for resilient food systems Resilience has been assumed as an emergent property of largely self-regulating market structures that comprise the food system in many countries. However, there is no guarantee that self-organisation, shared underlying infrastructures and other information flows between actors configure to generate a socially optimal compromise between lowest possible consumer prices and resilience to exogenous shocks. This includes stability of food supplies, plus consideration of other environmental and health external costs that might reasonably be expected of a system that seeks to promote sustainable production and consumption or a “whole society approach to food” (Lewis, 2020). The dominant food system in the UK is arguably focused predominantly on financial returns to shareholders, an objective that is not always convergent with this broader scope of resilience or transparent stewardship of the natural resource base on which it depends (Clapp and Isakson, 2018). As with the financial system at the time of the global financial crisis of 2007–2008, risk taking – arguably amplified by market power – is largely sanctioned by current regulation on the presumption that internal incentives align with broader social goals, and that the system has an in-built incentive not to fail. This presumption is an article of faith, both untested and risky. Notwithstanding largely coping with the recent stress-test from COVID-19 (Moran et al., 2020), there is nothing intrinsically self-correcting about current systems, which are responsible for a significant burden of national health and environmental externalities (Afshin et al., 2019; Springmann et al., 2018). Some have suggested that voluntary market discipline, corporate responsibility initiatives, and spontaneous collective action by some market participants, could correct detrimental social and environmental impacts. However, this notion has not been proven to be very reliable (Jones and Nisbet, 2011) and there are no market mechanisms to drive corrective actions to market failure. Expecting the delivery of a public good – resilience – by a system in private hands and increasingly concentrated in structure may therefore be hazardous. Regulation is a response to market failure. Current food system regulation largely monitors and controls some aspects of market power and the maintenance of food safety, the latter a credence attribute of food and therefore associated regulation is a public good function. If resilience is a public good, then there is a need for more regulation and research beyond market power and food safety, to understand risks and to untangle the additional elements of responsibility and agency of both private and public sectors with regards to resilience. 5. Conclusion Interest in food system resilience has increased in the wake of several regional and global crises, which have revealed systematic vulnerabilities that can be both amplified and neutralised by the presence of market power in parts of the supply chain. Power relations are not extensively discussed in resilience literature, and resilience is not extensively discussed in economic literature. Efficient markets constituted by profit-seeking actors have no built-in mechanism to deliver resilience. We highlight that some aspects associated with market power, such as infrastructure, financial capacity, and cooperation can be enablers for enhanced resilience in times of crisis. We equally highlight the need to consider how resilience can be jeopardised when the interests of dominant powerful firms are not aligned with societal interests, and when detrimental environmental and social effects are not regulated for. In such circumstances, risk is amplified by power imbalances. The provision of resilience – as a public good attribute of a system that is largely in private hands – potentially calls for wider scope of regulation that scrutinises elements such as functional diversity, flexibility, efficiency/redundancy trade-offs, autonomy, cooperation, agency and the regulation of environmental impacts to make firms accountable. This gets us nearer to whole society approach to food governance, suggested by some commentators.

Howard & Hendrickson, 21

[Philip & Mary, a faculty member in the Department of Community Sustainability at Michigan State University, Op-ed: Monopolies In the Food System Make Food More Expensive and Less Accessible. Civil Eats, 2-17-2021, <https://civileats.com/2021/02/17/op-ed-monopolies-in-the-food-system-make-food-more-expensive-and-less-accessible/>]

Agribusiness executives and government policymakers often praise the U.S. food system for producing abundant and affordable food. In fact, however, food costs are rising, and shoppers in many parts of the U.S. have limited access to fresh, healthy products. This isn’t just an academic argument. Even before the current pandemic, millions of people in the U.S. went hungry. In 2019, the U.S. Department of Agriculture estimated that over 35 million people were “food insecure,” meaning they did not have reliable access to affordable, nutritious food. Now, food banks are struggling to feed people who have lost jobs and income thanks to COVID-19. As rural sociologists, we study changes in food systems and sustainability. We’ve closely followed corporate consolidation of food production, processing, and distribution in the U.S. over the past 40 years. In our view, this process is making food less available or affordable for many Americans. Fewer, Larger Companies Consolidation has placed key decisions about our nation’s food system in the hands of a few large companies, giving them outsized influence to lobby policymakers, direct food and industry research, and influence media coverage. These corporations also have enormous power to make decisions about what food is produced how, where and by whom, and who gets to eat it. We’ve tracked this trend across the globe. It began in the 1980s with mergers and acquisitions that left a few large firms dominating nearly every step of the food chain. Among the largest are retailer Walmart, food processor Nestlé, and seed/chemical firm Bayer. Some corporate leaders have abused their power–for example, by allying with their few competitors to fix prices. In 2020, Christopher Lischewski, the former president and CEO of Bumblebee Foods, was convicted of conspiracy to fix prices of canned tuna. He was sentenced to 40 months in prison and fined $100,000. In the same year, chicken processor Pilgrim’s Pride pleaded guilty to price-fixing charges and was fined $110.5 million. Meatpacking company JBS settled a $24.5 million pork price-fixing lawsuit, and farmers won a class action settlement against peanut-shelling companies Olam and Birdsong. Industry consolidation is hard to track. Many subsidiary firms often are controlled by one parent corporation and engage in “contract packing,” in which a single processing plant produces identical foods that are then sold under dozens of different brands–including labels that compete directly against each other. Recalls ordered in response to food-borne disease outbreaks have revealed the broad scope of contracting relationships. Shutdowns at meatpacking plants due to COVID-19 infections among workers have shown how much of the U.S. food supply flows through a small number of facilities. With consolidation, large supermarket chains have closed many urban and rural stores. This process has left numerous communities with limited food selections and high prices–especially neighborhoods with many low-income, Black or Latinx households. Widespread Hunger As unemployment has risen during the pandemic, so has the number of hungry Americans. Feeding America, a nationwide network of food banks, estimates that up to 50 million people– including 17 million children–may currently be experiencing food insecurity. Nationwide, demand at food banks grew by over 48 percent during the first half of 2020. Simultaneously, disruptions in food supply chains forced farmers to dump milk down the drain, leave produce rotting in fields, and euthanize livestock that could not be processed at slaughterhouses. We estimate that between March and May of 2020, farmers disposed of somewhere between 300,000 and 800,000 hogs and 2 million chickens–more than 30,000 tons of meat. What role does concentration play in this situation? Research shows that retail concentration correlates with higher prices for consumers. It also shows that when food systems have fewer production and processing sites, disruptions can have major impacts on supply. Consolidation makes it easier for any industry to maintain high prices. With few players, companies simply match each other’s price increases rather than competing with them. Concentration in the U.S. food system has raised the costs of everything from breakfast cereal and coffee to beer. As the pandemic roiled the nation’s food system through 2020, consumer food costs rose by 3.4 percent, compared to 0.4 percent in 2018 and 0.9 percent in 2019. We expect retail prices to remain high because they are “sticky,” with a tendency to increase rapidly but to decline more slowly and only partially. We also believe there could be further supply disruptions. A few months into the pandemic, meat shelves in some U.S. stores sat empty, while some of the nation’s largest processors were exporting record amounts of meat to China. U.S. Senators Elizabeth Warren (D-MA) and Cory Booker (D-NJ) cited this imbalance as evidence of the need to crack down on what they called “monopolistic practices” by Tyson Foods, Cargill, JBS, and Smithfield, which dominate the U.S. meatpacking industry. Tyson Foods responded that a large portion of its exports were “cuts of meat or portions of the animal that are not desired by” Americans. Store shelves are no longer empty for most cuts of meat, but processing plants remain overbooked, with many scheduling well into 2021. Toward a More Equitable Food System In our view, a resilient food system that feeds everyone can be achieved only through a more equitable distribution of power. This in turn will require action in areas ranging from contract law and antitrust policy to workers’ rights and economic development. Farmers, workers, elected officials, and communities will have to work together to fashion alternatives and change policies. The goal should be to produce more locally sourced food with shorter and less-centralized supply chains. Detroit offers an example. Over the past 50 years, food producers there have established more than 1,900 urban farms and gardens. A planned community-owned food co-op will serve the city’s North End, whose residents are predominantly low- and moderate-income and African American. The federal government can help by adapting farm support programs to target farms and businesses that serve local and regional markets. State and federal incentives can build community- or cooperative-owned farms and processing and distribution businesses. Ventures like these could provide economic development opportunities while making the food system more resilient. In our view, the best solutions will come from listening to and working with the people most affected: sustainable farmers, farm and food service workers, entrepreneurs, and cooperators– and ultimately, the people whom they feed.

Tam and Bielskis 21 [Kristen & Olivia, Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement, 4-1-2021, <https://escholarship.org/content/qt0m16g2r5/qt0m16g2r5.pdf>]

The Court's ruling on Cargill v. Monfort did not, however, set a per se rule, which would have unequivocally “denied competitors standing to challenge acquisitions on the basis of predatory pricing theories.”85 Therefore, competitors can still challenge acquisitions on the basis of predatory pricing. However, because the Court ruled that showing loss of damage merely due to increased competition, or the threat of loss of profits due to possible price competition following a merger does not constitute antitrust injury to give injunctive relief under Section 16,86 if following competitors try to bring up this reason for antitrust injury, they will most likely be denied standing as the Court will refer back to this case. This language has been inscribed into this section’s jurisprudence doctrines and has not been overturned or amended since, as more recently cited in the definition of antitrust standing in Glen Holly Entm’t, Inc. v. Tektronix Inc case in 2003.87 The subsequent adverse impacts of consolidation on the market demonstrate that showing loss of damage due merely to increased competition, or the threat of loss of profits due to possible price competition following a merger does constitute antitrust injury and should be struck down.

## Advantage

#### It solves food and the environment

**Nordhaus and Blaustein-Rejto 21** , Ted Nordhaus is a leading global thinker on energy, environment, climate, human development, and politics. He is the founder and executive director of the Breakthrough Institute and a co-author of An Ecomodernist Manifesto. Dan Blaustein-Rejto is the director of food and agriculture at the Breakthrough Institute, where he analyzes the economics and potential of sustainable agriculture policies and practices. He has conducted research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition. (Ted and Dan, 4/18/2021, “Big Agriculture Is Best,” *Foreign Policy*, <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/> Date Accessed: 5/23/2021)

Debates about the social and environmental impacts of America’s food system cannot be disentangled from the basic reality that in a modern industrialized society, most people will live in cities and suburbs and will not work in agriculture. As a result, most food will need to be produced by large farms, with little labor, far away from the people who will consume it.

Many sustainable agriculture advocates tout the [recent growth](https://www.fooddive.com/news/organic-produce-sales-growth-tops-14-in-2020/593702/#:~:text=Sales%20of%20organic%20produce%20rose,conventional%20produce%20sales%20rose%2010.7%25.) of organic agriculture as proof that an alternative food system is possible. But growing market share vastly overstates how much food is actually produced organically. In reality, organic production accounts for little more than [1 percent](https://www.ers.usda.gov/data-products/organic-production/) of total U.S. agricultural land use. Meanwhile, only a bit more than [5 percent](https://www.agweek.com/business/agriculture/4622665-us-organic-market-tops-50-billion) of food sales come from organic producers, mostly because organic sales are overwhelmingly concentrated in high-value sectors of the market, namely produce and dairy, and fetch a premium from well-heeled consumers.

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a [large-scale shift](https://www.technologyreview.com/2019/10/22/132497/sorryorganic-farming-is-actually-worse-for-climate-change/) to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

#### AND it turns disease.

Alex Smith 20, Food and Agriculture Analyst at the Breakthrough Institute, MA/MSc in International and World History from Columbia University and the London School of Economics and Political Science, “To Combat Pandemics, Intensify Agriculture”, The Breakthrough Institute, 4/13/2020, https://thebreakthrough.org/issues/food/zoonosis

There is broad agreement in the epidemiological and virological studies of zoonoses that the most important factor in the development of new zoonotic diseases is land-use change. The development of wild lands, whether caused by agricultural extensification, mining, or other factors, simultaneously shrinks the habitat of wildlife and brings that wildlife in close proximity to human settlements. The combination of shrinking habitats, human-wildlife interactions, and food insecurity is a recipe for zoonosis. In West Africa, these three factors combined were responsible for HIV/AIDS and the slew of recent Ebola outbreaks.

Even when food insecurity and the consumption of wildlife are taken out of the equation, land-use change is a powerful driver of zoonotic disease, and has resulted in outbreaks of zoonotic diseases like malaria, yellow fever, dengue fever, Nipah virus, West Nile virus, Zika virus, and Lyme disease. Often, these diseases are transmitted from animals to humans through an intermediary, sometimes an insect (mosquitoes or ticks) and sometimes through livestock that live too close to wildlife populations, as was the case with Nipah.

Because the biggest driver of land-use change is agriculture, “intensive” high-yield agriculture often takes the blame, but the alternative — extensive, low-yield farming — would be worse. To prevent further pandemics, we must do as much as we can to stop land-use change while improving food security. We must, in other words, improve agricultural yields, allowing us to grow more food on less land. So, contrary to what many have asserted, a vital lever for limiting land-use change and providing cheap food for all is not to abandon intensive agriculture, but to intensify it further, especially in the developing world where food insecurity is greatest and where growing populations means rising food demand.

It is thanks to rising yields that farmers, globally, produce about three times the amount of crops while only using 13% more land than in 1950. For example, if yields from cereal production hadn’t increased since 1961, the global agricultural footprint would be 24% larger than it is today — increasing from roughly 50% at current levels to 62% of total habitable land — and would likely have resulted in even deadlier zoonotic outbreaks.

#### It's net-offense---productivity is the biggest variable for conservation AND trends solve their internal link

Alex Smith 20, Food and Agriculture Analyst at the Breakthrough Institute, MA/MSc in International and World History from Columbia University and the London School of Economics and Political Science, “To Combat Pandemics, Intensify Agriculture”, The Breakthrough Institute, 4/13/2020, https://thebreakthrough.org/issues/food/zoonosis

Alongside reducing deforestation and land-use change and improving food access and security, sustainably intensifying agriculture across the globe would benefit biodiversity by protecting habitats and keeping them from agricultural development. While monoculture means less biodiversity on farmland, the productivity gains of monocropping — and other intensive agricultural practices — allow for the sparing of far greater land that can be used as habitat for wild flora and fauna. Certainly, agricultural intensification alone is not enough to maximize land-sparing benefits, as improved conservation and land policy is needed to minimize rebound effects. But greater productivity is likely the longest lever for achieving ambitious conservation goals.

The spread of intensive agriculture has come with rising nitrogen run-off, methane emissions, and other environmental impacts. These are real problems, but their solution is the continued improvement of intensive systems. In fact, we are already seeing reductions in many environmental impacts from agriculture in countries where intensive agriculture is prevalent, such as the US.

#### 2. Sustainability is increasing

Alison McGrew 20, Writer for Illinois Farm Families, “3 Myths About Sustainable Agriculture”, March 2020, https://www.watchusgrow.org/2020/03/02/3-myths-about-sustainable-agriculture/

Myth #1: Today’s farms are less sustainable than they used to be.

Fact: Simply put, farmers today are doing more with less. Here are a few examples:

* Compared to 1977, today’s beef farmers produce the same amount of beef with 33% fewer cattle.
* Pig farms now use 75.9% less land than in 1960.
* Over the last 40 years, soybean farmers have nearly doubled how much they grow while using 8% less energy.
* Dairy farmers have reduced greenhouse gas (GHG) emissions by 63% over the past 60 years.
* Corn farmers have increased yields while reducing pesticide and fertilizer use, thanks in part to biotechnology.

Sustainable agriculture may look different on each farm, but the goal is always the same: make the farm better for tomorrow and for future generations while providing a safe, sustainable food supply.

#### 3. Monocultures are efficient AND easily managed---no mass crop failure

Andrew Porterfield 18, MS in Biotechnology from the University of Maryland, BA from the University of Pennsylvania, Owner of Porterfield Marketing and Communications, Writer, Editor and Communications Consultant for Academic Institutions, Companies and Non-Profits in the Life Sciences, “Is monoculture a bad thing? It’s time to revise simplistic ideological narrative”, Genetic Literacy Project, 5/4/2018, https://geneticliteracyproject.org/2018/05/04/is-monoculture-a-bad-thing-its-time-to-revise-simplistic-ideological-narrative/

In a Nebraska field, thousands of acres of winter wheat stretch to the horizon. In California, workers pick strawberries in a field that has grown no other crop for the past eight years. And in Maryland, a single tomato plant grows in a single pot.

What do these have in common?

They could all fall under the phrase “monoculture.” Okay, that last one with the tomato is a bit of a stretch, but it’s an example that underscores how simplistic this discussion often plays out. Many critics of modern agriculture, including anti-GMO activists, point to monoculture as what Michael Pollan calls the “great evil of modern agriculture” and a major reason for the loss of biodiversity in agriculture. They say that biotech crops encourage monocultural farming.

So, what is “monoculture” and is it bad or is the issue more complicated?

Andrew Kniss, a plant scientist and weed expert at the University of Wyoming, is one of many scientists who think that the word doesn’t do the practices justice. On the surface, all monoculture means is that a farmer is growing just one crop in an area. By that definition, all crops are grown in monocultures except for those grown in the tiniest of farms or home gardens.

So, how big an area defines what is “monoculture”? And how many years must a crop be grown in a given field before it’s considered “monoculture”? Does monoculture actually reduce biodiversity?

What does the science say?

Most critics appear to use the term to suggest that something bad happens in single crop areas: blight, crop failure, or loss of biodiversity (in the form of native plants, pollinating insects, or microorganisms).

The Union of Concerned Scientists, under the leadership of its prior agricultural sciences director Doug Gurian-Sherman—who left UCS two years ago and now lobbies against crop biotechnology for the Center of Food Safety [read GLP profile of Gurian-Sherman here]—has argued in a post entitled “Expanding Monoculture: 8 Ways Monsanto Falls at Sustainable Agriculture”, that monoculture reduces diversity and leads to a host of other problems.

Monsanto’s emphasis on limited varieties of a few commodity crops contributes to reduced biodiversity and, as a consequence, to increased pesticide use and fertilizer pollution. Large-acreage field crops—corn, cotton, soybeans, canola, and now alfalfa—make up the bulk of Monsanto’s products, in part because of the high cost of developing engineered traits. And the approach to agriculture that this product line encourages—monoculture, the production of only one crop in a field year after year—is not a sustainable one.

The piece is short of an understanding of the basic science of farming and long on ideology, say agricultural experts.

Consider crop rotation. Most organic food supporters point to crop rotations, which are required for organic certification, as an alternative to the ‘dangers’ of monoculture. But that’s a deceptive argument. Most large farms now rotate their crops as well, so rotating in an of itself does not address the question of the impact of monoculture. And just switching between crops in alternate years doesn’t bring the kind of genetic diversity that can prevent the downsides of mechanized farming.

Monoculture, incorporating crop rotation, can also have positive impacts. Just having one crop in the field allows mechanization of agriculture. Mechanized farming allows faster, efficient planting, weeding, and harvesting, which reduces the destruction of habitats–organic and agro-ecological farming has a yield lag averaging 15-45%. Scaled up to meet the growing global demand for food, smaller scare farming would result in clear cutting of forests and dramatically reduce biodiversity, leading to a sharp increase in greenhouse gases. Intensive farming also frees humans to discover other ways to spend our time and make a living.

Kniss also has made the point that a focus on genetic biodiversity in farming can help reduce the problems of monoculture while preserving its benefits. Examples such as the Irish Potato Famine shows what can happen when farmers depend not only on just one crop but on a crop that is genetically very, very narrow; they are vulnerable to disease. Planting genetically diverse potatoes (or any other crop) can help protect against the potentially negative impact of monoculture. And newly developed genetically modified crops, such as the Simplot Innate potato, have been specifically engineered to protect against the genetically narrowly focused potato blight. Other conventional and organically-grown potatoes are still vulnerable to the blight.

# 1NR

## DA — Warming