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**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 — CP

#### The United States federal government should create a new regulatory agency called the Department of Food which will review and condition restrictions on all mergers in the agricultural sector on companies and cooperatives committing to provide substantial resources to the domestic and international development of sustainable agriculture practices that shift away from industrial agriculture including substantial reductions in use of chemicals and pesticides, pursuit of cooperative procompetitive research and development collaboration with small farms and cooperatives, promotion of crop diversity and ending of monocropping, the preservation of genetic diversity, the lowering of commodity prices and the communal sharing of agricultural technologies and resources globally. The Department of Food will deny licenses to operate in United States markets for noncompliance of merger or acquisition conditions.

#### That solves best — resource constraints mean sustainable practices are impossible when you limit monopolies

Carlisle et al 19, Environmental Studies Program, University of California, Santa Barbara, Liz, Transitioning to Sustainable Agriculture Requires Growing and Sustaining an Ecologically Skilled Workforce, https://www.frontiersin.org/articles/10.3389/fsufs.2019.00096/full#B35

Barriers to Becoming a Sustainable Farmer The first step toward growing an agroecologically-skilled workforce involves reducing the initial barriers to entry into farming, which may be even more challenging for farmers hoping to embrace such practices. One of the biggest barriers faced by would-be farmers is acquiring or gaining access to land, particularly land with adequate access to water. As development pressures and policies favor “productive” purposes like housing and infrastructure, national farmland acreage nationwide has decreased, often irreversibly. A recent report on farmland loss estimates a reduction of 31 million acres between 1992 and 2012 (American Farmland Trust, 2018), with African American and Native American farmers disproportionately affected by land loss (Dunbar-Ortiz, 2014; Newkirk, 2019). In California alone, 1.4 million acres of farm and grazing land were lost between 1984 and 2014, a decrease of about 50,000 acres per year (California Department of Conservation, 2019). That trend appears to be accelerating still further: according to the new USDA Agricultural Census, between 2012 and 2017, California land in farms declined by an average of 209,240 acres per year. In parallel—and perhaps as a result—remaining US farmland has steadily increased in value, with croplands doubling in appreciation in the 2004–2014 period (USDA NASS, 2017). The aging farm population would appear to present an opportunity for new farmers (including farm workers) to buy out retirees, but without robust land use policies, much of this farmland is instead being transferred to institutional investors, which means new farmers are more likely to be tenants than farmland owners (Calo and De Master, 2016). As tenants, farmers have less autonomy to make long-term management decisions—decisions which may pose a relatively greater challenge for farmers interested in pursuing agroecology. For example, tenant farmers may not be in a position to invest in perennial crops, conservation infrastructure, or soil health (Calo and De Master, 2016). Land is not the only major asset for which new farmers require staggering amounts of up-front capital: equipment, operating costs, and proper storage and post-handling facilities can require millions of dollars before farmers harvest their first crop (Schiller, 2017). These costs may be even higher for biologically diversified farms, as they tend to require more diverse and appropriately scaled equipment that may be used only at certain times of the year or only for specific crops. These farms also need to make upfront investments in soil health and ecosystem function, such as soil-building cover crops, compost applications, and hedgerows. Over time, these investments can reduce input costs and production risk, while boosting fertility, carbon sequestration potential, and drought resilience. But their economic benefits may not be realized for years, while farmers can face initial production risks from switching to new practices. Moreover, new farmers have few options for financing such investments without incurring significant debt, and new farmers using ecologically-informed management are particularly poorly served by federal crop insurance subsidies, half of which go to farms in the top 10% of crop sales (Belasco, 2017) and many of which undervalue or even deter sustainable farming practices (Woodard and Verteramo-Chiu, 2017).

#### Only mergers can create the resource base for sustainable agriculture and the sharing of knowledge and technology — they need to be turned in the right direction

Guernsey 17, a partner in family farming operation and Chief Executive Officer of a Healthcare & Medical Equipment Non-Profit Organization in Kansas City and former State Rep in Missouri. (Casey, Combined Strengths of Merged Bayer, Monsanto Will Help World Meet Formidable Challenge – Feeding 10 Billion People, https://themissouritimes.com/combined-strengths-merged-bayer-monsanto-will-help-world-meet-formidable-challenge-feeding-10-billion-people/)

Our world faces many daunting challenges in the decades ahead, with perhaps the most basic being how to feed a growing population even as our living space consumes more and more of the land where our food is produced. We must increase agricultural productivity by 60 percent to feed the approximately 10 billion people expected to inhabit the Earth by 2050 (up from 7 billion right now) – even as the amount of farmland per capita decreases by 17 percent from today’s levels. The task is made more complex by the expected effects of climate change, which experts see decreasing farm yields by 17 percent over the same 33-year period. Tools to overcome these obstacles can be provided only by aggressive, well-managed research and development that improves the ways crops and farm animals are raised – not only the science of agriculture, but the ways technology and masses of data can be applied to help farmers use that science at the right time and in the best ways to generate results. The world’s numerous companies and research institutions devoted to advancing agricultural science must reinvigorate and unify their efforts to provide humans with more nutritious food, in a sustainable way, using less land. The proposed merger of Germany-based Bayer and America’s Monsanto provides one vehicle for creating the research and development base we need for global agriculture. The two companies already are leaders across a broad span of agricultural R&D, responsible for thousands of products that have revolutionized agriculture over recent decades. And they are leading the way toward greater integration of technology into farm management. Their combined R&D portfolio – an astounding EUR 2.5 billion annual endeavor – will have exceptional depth and reach, with enormous commercial potential. Between them, the merged companies have 10,000 research and development professionals working around the globe at more than 40 R&D facilities, and at 200 breeding stations devoted to improving not only the yields from farm animals but also the health of those animals. (Overall, Bayer has almost 117,000 employees worldwide, including 12,000 in the U.S., while Monsanto has about 20,000 workers.) Today, both Bayer and Monsanto are moving ahead with strong product development efforts that promise to pay off for farmers and consumers in the short, medium, and long terms. Merging the two companies – an event targeted for the end of this year – will help make sure all of these efforts stay on track while also assuring that the combined operation can fully explore new opportunities to build more efficient, sustainable agriculture. Together, their innovation will give the world more choices and quality, and greater food security. Whenever a merger of major companies is discussed, the question is inevitable – will people lose jobs as a result? This transaction, I am confident after looking into the details, is focused heavily on driving innovation, growth, and investment rather than cutting costs. When you look at their structures, Bayer and Monsanto have many complimentary operations and few overlaps. While it is never safe to say, “There will be no job losses,” both companies are expected to maintain major sites that already operate in the U.S. and Germany. For instance, the combined agricultural business will have its Seeds & Traits operation, and its North American headquarters, in Monsanto’s hometown of St. Louis – and there will be key facilities in Durham, NC, as well as several other locations across America. San Francisco, meanwhile, will host the combined companies’ digital farming activities – a key business sector in the years ahead, as we create new opportunities for farmers worldwide to leverage data in better management of their crops and risks. While the new parent company will be based in Germany, the benefits of this merger for the U.S. are many and deep. America’s strong farming community will be at the heart of the global drive to keep food production abreast of both domestic and global needs. The combined talents and energies of Bayer and Monsanto will give American farmers the tools they need to feed the world. Monsanto’s 115-year history as an innovator and good corporate citizen will not be erased, but rather enhanced as it becomes one with 150-year-old Bayer – another global corporate citizen long familiar to Americans. Feeding a growing world – and feeding it better – requires new thinking, new tools, and a new commitment to hard work and partnerships. The combined forces of Bayer and Monsanto will lead the way toward to better-nourished humanity, and help all of us take better care of the land and animals that provide our nourishment.

#### Mergers say yes — Monsanto is willing

Hardcastle 16, has worked as a writer and editor at newspapers, magazines and online publications for more than a decade covering business, green technology, renewable energy and other environmental issues. She has written for Energy Manager Today, Solar Novus Today, Novus Light Technologies Today and Silicon Valley Business Journal. (Jessica, Bayer-Monsanto Deal: What Does It Mean for Sustainable Agriculture?, https://www.environmentalleader.com/2016/09/bayer-monsanto-deal-what-does-it-mean-for-sustainable-agriculture/)

Monsanto is also part of a newly formed partnership that aims to help farmers improve their bottom line while conserving natural resources through sustainable agriculture practices. Other founding members include major food and agriculture companies such as Cargill, General Mills, Kellogg, PepsiCo and Walmart. Indeed, Monsanto has made several very public pledges and partnerships confirming its commitment to sustainable agriculture. In 2013 the agribusiness company partnered with biochemical firm Novozymes to launch the BioAg Alliance, which aims to improve crop harvests through naturally occurring microbes such as bacteria and fungi. And late last year Monsanto said it will make its operations carbon neutral by 2021 by working with farmers to cut emissions and a program targeted across its seed and crop protection operations. Still, Monsanto hasn’t been able to make its sustainability-cred stick. The California EPA says the main ingredient in Monsanto’s chemical pesticide brand Roundup causes cancer and France and other European countries have banned the sale of Roundup, citing human health and environmental concerns. And while the jury is still out as to whether genetically modified crops will save — or destroy — sustainable agriculture, many environmentalists don’t like GMOs and they really don’t like the fact that they make up a big part of Monsanto’s business. This merger could help change Monsanto’s image, says Lux Research analyst Laura Lee. “This might be a chance for Monsanto to rebrand itself,” she said in an interview. “Monsanto has made several attempts to promote sustainable agriculture and they are public about their pledge to make their operations carbon neutral by 2021. But many of these pledges about sustainable farming fall on deaf ears. Monsanto has been the company that gets the negative target on their back.” Lee says Bayer’s pharmaceutical background — and it being a trusted household brand — may rub off on Monsanto. “If this acquisition goes through, it may be a chance for Monsanto to become a more trusted company to its pledges like conservation ag and carbon neutrality may have more gusto,” she said.

#### Sustainable innovation is key to hegemony

Goldstein and Oken 21 (Gordon M. Goldstein is an adjunct senior fellow at the Council on Foreign Relations (CFR). From 2010 to 2018, he was also a managing director at Silver Lake, the world’s largest investment firm in the global technology industry.“America’s New Challenge: Confronting the Crisis in Food Security,” pg online @ <https://www.cfr.org/blog/americas-new-challenge-confronting-crisis-food-security> //um-ef)

The Biden administration has encouraged the world with its renewed commitment to the Paris accord and the goal of combatting the existential challenge of global climate change. But that bold objective will not be achieved without a comprehensive parallel American exercise of leadership to confront the crisis in food security. Such a strategy is imperative on a global basis and critical to U.S. domestic policy. The challenge of food security will require leveraging advances in technology and demand policy innovation within the U.S. government and deep cooperation between the public and private sectors. If not tackled comprehensively and effectively, failure to mitigate the crisis in the sustainability of our global food supply chain will devastate the multilateral effort to arrest climate change. The global dimensions of food instability are staggering. As the global population grows to a projected 10 billion in 2050, with a concurrent growth in income, overall food requirements are forecast to increase [PDF] by more than 50 percent. The demand for resource-intensive foods like meat and dairy is projected to grow by 70 percent. The crisis in food sustainability displays a disturbing daily cadence. The world has lost 1,000 football fields worth of forest every hour, almost 30 million acres annually. According to a recent scientific study, climate change has diminished global food productivity by more than 20 percent over the past 60 years. If crop and pasture yields continue to grow as projected, by 2050 agricultural land will need to increase by an area nearly twice the size of India. Not surprisingly, the world’s most populous and wealthy countries contribute the most to the crisis in food sustainability. Roughly 40 percent of greenhouse gas emissions from agriculture are clustered in four countries—the United States, China, India and Brazil. Since 1990, roughly 24 percent of global Greenhouse Gas Emissions can be attributed to the food system and our disproportionate reliance on livestock. Further exacerbating the problem is the methane produced in the agriculture industry, which is ~30 to ~80 times as deleterious to the environment as carbon dioxide. The United States suffers from its own acute national challenges. Estimates suggest 23 million people live in so-called “food deserts”—low-income areas with poor access to healthy food. The pandemic, which has led to over 50 million Americans facing food insecurity, has illustrated the weakness in our food system and supply chain resiliency. Americans in lower income segments spend 30-40 percent of their income on food. The food security crisis in the United States has recently prompted the Biden administration to propose tens of billions of dollars of new federal assistance to American families at risk. The United States has historically used food policy to strengthen its relationship with friends and allies through initiatives such as the U.S. Food for Peace Program, the 1960’s “Green Revolution” or the so-called “Third Agricultural Revolution” which featured research and technology transfers that significantly increased agricultural production globally while feeding millions and increasing U.S. influence worldwide. The United States is once again poised to use its rich history of innovation in foreign agricultural policy to both enhance its influence with friends and allies where food insecurity is a major issue—the Middle East, Africa, and emerging economies in Asia. These include some of the same countries that China is courting through its “Belt and Road” initiative, which seeks to construct a massive infrastructure network around the world. The United States should leverage its private and public sources of capital and innovation, in partnership with new and incumbent players in the corporate community, to accelerate the transition to global food sustainability. Advances in emerging technologies hold the promise to both alleviate the food crisis and amplify American influence abroad. The next era of food sustainability will be influenced by breakthroughs in global technology such as fifth generation telecommunications, robotics, artificial intelligence, and nanotechnology. Specific areas of technology investment that will contribute to higher levels of productivity and efficiency in food generation with a decreased impact on the environment encompass initiatives in agricultural biotechnology, such as genetics, microbiome, breeding and animal health; alternative food products, including plant-based forms of alternative protein, which are surging in popularity and adoption; farm management systems, including sensing and data analytics software; farm robotics, including automation and drone based monitoring; and new farming structures, such as indoor farming and aquaculture. In addition, the Biden administration needs to drive tax, investment, regulatory and subsidy policies that encourage the increased flow of capital into the transition to viable food sustainability strategies, including investment into cell-based and plant-based meats; the wider implementation of regenerative agriculture practices, including agribusiness marketplaces and farm robotics, mechanization and equipment; and, finally, the reduction of waste throughout the food value chain. The companies and countries that are the leaders in these areas of innovation will not only strengthen global food supply but also capture the intellectual property, information and data that is embedded in the global food supply chain. In addition to addressing an urgent global challenge, American innovation in food security would support the goals of the Strategic Competition Act of 2021, bipartisan legislation crafted by the Senate Foreign Relations Committee that seeks to counter China’s growing economic and geopolitical and technology competition with the United States.

#### Alliances stop global nuclear war, wildfire prolif, and adventurism.

Brands and Feaver ’17 [Hal and Peter; Summer 2017; Professor of Global Affairs at Johns Hopkins University’s School of Advanced International Studies, Senior Fellow at the Center for Strategic and Budgetary Assessments; Professor of Political Science and Public Policy at Duke University, Director of the Triangle Institute for Security Studies, Director of the Duke Program in American Grand Strategy; The U.S. Army War College Quarterly Parameters, “What Are America’s Alliances Good For?” <https://www.hsdl.org/?view&did=803998>]

Geostrategic Influence and Global Stability

If alliances are thus helpful in terms of the conflicts America wages, they are more helpful still in terms of the conflicts they prevent and the broader geostrategic influence they confer. Indeed, although the ultimate test of America’s alliances lies in their efficacy as warfighting coalitions, the most powerful benefits they provide come in the normal course of peacetime geostrategic management and competition.

First, US alliances bind many of the richest and most militarily capable countries in the world to Washington through enduring relationships of deep cooperation. Alliances reflect shared interests rather than creating them, of course, and the United States would presumably have close ties to countries such as the United Kingdom even without formal alliances. But alliances nonetheless serve as “hoops of steel.” They help create a sense of permanence and shared purpose in key relationships; they provide forums for regular interaction and cooperation; they conduce to deeply institutionalized exchanges (of intelligence, personnel, and other assets) that insulate and perpetuate friendly associations even when political leaders clash.38 And insofar as US alliances serve these purposes with respect to immensely influential countries in Europe and the Asia-Pacific, they help Washington preserve a significant overbalance of power vis-à-vis any competitor.

Second, alliances have a strong deterrent effect on would-be aggressors. American alliances lay down “redlines” regarding areas in which territorial aggression is impermissible; they complicate the calculus of any potential aggressor by raising the strong possibility that an attack on a US ally will mean a fight with the world’s most formidable military. The proposition that “defensive alliances deter the initiation of disputes” is, in fact, supported by empirical evidence, and the forward deployment of troops strengthens this deterrence further still.39

NATO clearly had an important deterrent effect on Soviet calculations during the Cold War, for instance; more recently, Russia has behaved most aggressively toward countries lacking US alliance guarantees (Georgia and Ukraine), rather than toward those countries possessing them (the Baltic states or Poland). In other words, alliances make the geostrategic status quo—which is enormously favorable to the United States—far “stickier” than it might otherwise be.

Third, and related to this second benefit, alliances tamp down international instability more broadly. American security guarantees allow US allies to underbuild their own militaries; while always annoying and problematic when taken to extremes, this phenomenon also helps avert the arms races and febrile security competitions that plagued Europe and East Asia in earlier eras. In fact, US alliances are as useful in managing tensions among America’s allies as they are in constraining America’s adversaries.

NATO was always intended to keep the “Americans in” and the “Germans down” as well as the “Russians out”; US presence, along with the creation of a framework in which France and Germany were incentivized to cooperate rather than compete with one another, would help stifle any resurgence of tensions between these historical rivals.40 Similarly, US alliance guarantees in the Asia-Pacific were designed, in part, to create a climate of security in which Japan could be revived economically without threatening its neighbors, just as the expansion of NATO after the Cold War helped prevent incipient rivalries and territorial irredentism among former members of the Warsaw Pact.41 US alliances keep things quiet in regions Washington cannot ignore, thereby fostering a climate of peace in which America and its partners can flourish.

Fourth, US alliances impede dangerous geostrategic phenomena such as nuclear proliferation. As scholars such as Francis Gavin have emphasized, US security guarantees and forward deployments have played a critical role in convincing historically insecure, technologically advanced countries—Germany, Japan, Taiwan, South Korea, among others—to forego possession of the world’s absolute weapon. In several of these cases, moreover, the United States has used the security leverage provided by alliance guarantees to dissuade allies from pursuing the bomb after they had given indications of their intent to start down that path.42 If, as seems likely, a world with more nuclear powers is likely to be a more dangerous world in which crises more frequently take on a nuclear dimension and the risk of nuclear conflict is higher, then the value of American alliances looms large indeed.

In sum, as the framers of the post-World War II order understood, phenomena such as massive instability, arms racing, and violence in key regions would eventually imperil the United States itself.43 Whatever modest reduction in short-term costs might come from pursuing a “free hand” or isolationist strategy was thus more than lost by the expense of fighting and winning a major war to restore order. Accordingly, America’s peacetime alliance system represents a cheaper, more prudent alternative for maximizing US influence while also preventing raging instability by deterring aggression and managing rivalries among friends. The fact that so many observers seem to have forgotten why, precisely, America has alliances in the first place is an ironic testament to just how well the system has succeeded

### 1NC — DA

#### FTC fraud prevention is funded now---unexpected demands trade off

Bilirakis et al. 21 (Gus Michael Bilirakis is an American lawyer and politician serving as the U.S. Representative for Florida's 12th congressional district since 2013; Hon. Noah Joshua Phillips is a Commissioner at the Federal Trade Commission; Hon. Lina Khan is the Chair of the Federal Trade Commission, “Transforming the FTC: Legislation to Modernize Consumer Protection,” *Committee on Energy and Commerce*, 6/28/21, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer>)

Gus Bilirakis (3:12:44): Thank you. Our committee has worked extensively in a bipartisan manner to protect consumers from fraud and scams. Mr. Carter's Combating Pandemic Scams Act was enacted at the beginning of the year thanks to all of our leadership here. Representive Blunt Rochester's Fraud and Scam Reduction Act, as well as Representative Kelly's Protecting Seniors from Emergency Scams Act both cleared our chamber with bipartisan support this year. My bill, HR 2672, the FTC Reports Act, would require the FTC to report on fraud against our seniors. Commissioner Philips, how important is the work the FTC staff does to protect Americans from scams? Noah Josuha Phillips (3:13:33): Congressman, thank you for your question. The work we do to protect American consumers against frauds and scams, is our bread and butter as an agency. There is no work that makes me feel better as a commissioner, when we watch our ability to find bad guys, or taking money from American consumers, dipping into their life savings, and get that money back to them. So the work that you have done on the committee to provide funding, to provide tools for us to go after scam artists, is critical. And I think that needs to continue with the agency. Gus Bilirakis (3:14:05): Thank you, and Chair Khan, again, as you pursue other initiatives, when staff and resources be shifted away from the fraud program, which is so essential in preventing bad actors from harming our constituents? That's the question, please. Lina Khan (3:14:22): Sorry, could you repeat the question - when should services be shifted... Gus Bilirakis (3:14:26): Yes, of course. As you pursue other initiatives, when staff and resources be shifted away from your fraud program, which is so essential in preventing bad actors from harming our constituents? Lina Khan (3:14:40): Well, of course, we're always limited by the appropriations bills when it comes to thinking through how we're delegating resources across the agency. In certain instances, I think there are exigent needs that can arise in certain aspects. Gus Bilirakis (3:14:54): But you don't anticipate moving money from the fraud program, is that correct? Lina Khan (3:15:00): Not especially, but I mean, I think overall, we are trying to look through the prism of managerial efficiency and trying to understand how we can best use our resources, especially given some of the exigent circumstances and so we'll be continuing to make those determinations. Gus Bilirakis (3:15:15): I suggest that you not because this is such a very important program. Commissioner Wilson, can you elaborate on why the FTC Reports Act would also prove beneficial to increasing much needed transparency and the flow of information within the commission?

#### Unplanned expanded enforcement drains finite resources from existing priorities

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

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

#### Independent of direct enforcement, Congress hates the plan. Ag interest groups control the debate.

Brock 21, assistant professor of American politics and public policy at Texas Woman's University (Clare, “Why is corporate lobbying on food skyrocketing?,” *Medium*, <https://medium.com/3streams/food-business-lobbying-and-political-polarization-bc812e93cf28>)

My latest research published in the journal, Interest Groups & Advocacy, suggests that political polarization is altering corporate lobbying in food and agriculture in very specific ways. As partisan polarization increases in this policy area, corporations are increasing their lobbying efforts in Congress. Why is this? Interest groups are working longer and harder to lobby members of Congress because that’s where the largest, loudest, most heated conflict occurs. As conflict increases, lobbying groups have to adjust their strategies accordingly. We often call this prolonged conflict in Congress and the resulting inaction “gridlock”, and in recent decades this has been particularly true. Congress is slow to move and the fights are fierce. Even within committee, legislation that once drew consensus now draws fire. And as partisanship increases, so does gridlock. For lobbyists and those who wish to influence the outcomes of legislation, this means that they must work harder and longer to see legislation through from start to finish. At the same time, gridlock and a prolonged process also means that there may be more opportunity for groups to influence policy content as lawmakers debate specific provisions and ideas to death (or life). This combination matters because polarization is likely to increase the competitive advantage that wealthy interest groups already enjoy. Lobbying is already dominated heavily by corporate interests. This is because lobbying is not cheap and is most easily undertaken as a collective activity. As gridlock prolongs the time between legislation being crafted and its passage, interest groups that would like to influence policy content must engage for increasingly long durations. Sustaining these efforts for year after year becomes both necessary and, for many, financially prohibitive. The wealthiest interest groups and corporations can sustain high levels of lobbying for much longer than more resource-poor groups. And this finding is especially important in a subsystem like food and agriculture, which affects our health and wellbeing on such a fundamental level. Current farm subsidies already reinforce disparities between farmers. In 2019, 54% of all payments went to the wealthiest 1/10th of farmers. As polarization further advantages wealthy interests who are able to sustain lobbying efforts, it is possible that such disparities will worsen. Farm policy impacts the cost of food, gas prices (ethanol is made from corn), food access, conservation policy, and more. This is not to say that wealthy interests and corporations are “buying” legislation. That has never been strictly true. Politicians are undoubtedly influenced by their ideologies, constituencies, and co-partisans. All this is simply to say that an increase in conflict within Congress prolongs the process in a way that exacerbates the advantages of wealthy interest groups. Polarization and gridlock don’t just frustrate Americans, they also have real consequences for policymaking and whose voice gets heard on the Hill.

#### Congress responds with FTC wing-clipping

Hyman 14, Workman Chair in Law and Professor of Medicine, University of Illinois, and former special Counsel at the Federal Trade Commission (David A., and William E. Kovacic, Hyman is H. Ross & Helen; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Can’t Anyone Here Play This Game - Judging the FTC’s Critics The FTC at 100: Centennial Commemorations and Proposals for Progress: Essays,” George Washington Law Review, 83.6)

The ABA Commission set out three basic guidelines for the FTC's future antitrust work:

(1) Forsake trivia in favor of economically significant matters;123

(2) Emphasize cases involving complex, unsettled questions of competition economics and law, and leave per se cases to the DOJ;124 and

(3) Replace voluntary commitments with binding, compulsory orders. 12 5

Each of these changes certainly sounds sensible, particularly when taken one at a time. After all, who could be against the forsaking of trivia? But, each change involved a shift from a safer law enforcement strategy to a riskier one. The pursuit of economically significant matters galvanizes tougher opposition in litigation and motivates firms to seek out legislative assistance in backing down the agency. Focusing on complex and unsettled areas of the law involves greater litigation risk (because the cases are on the edges of existing doctrine) and exposes the agency more broadly to claims that it is engaged in unprecedented enforcement or sheer adventurism. The pursuit of tougher remedies arouses a stronger defense by respondents and, again, increases efforts to enlist Congress to discipline the FTC. Although the ABA Commission noted the importance of political support and a vigorous chairman who would "resist pressures from Congress, the Executive Branch, or the business community," 1 26 it paid almost no attention to the predictable consequences of having the FTC occupy the risk-heavy end of the spectrum of all possible enforcement matters. The political science literature before 1969 had emphasized the political dangers inherent in the Commission's expansive norms-creation mandate and its broad information-gathering and reporting powers.1 27 For example, Pendleton Herring's study in the mid-1930s about the political hazards facing economic regulatory bod-ies said the agency's mandate placed it in "a precarious position" from the start: The parties coming within [the FTC's] jurisdiction were often very powerful. The more important the business, the wider its ramifications, and the more numerous its allies and subsidiaries, the closer it came within the commission's responsibility. To review the firms with which this agency has had official contacts, especially in its early years, is to go down the roster of big business in this country. Making political enemies was soon found to be an incident in the routine of administration. The discharging of official duties meant interfering with business and often "big business."128 Had it read and absorbed the teaching of the available political science literature, the ABA panel would have had to confront deeper, harder questions about the causes of the FTC's performance. The panel missed (or underestimated) the big issue of politics. Like many blue ribbon studies of government performance, the ABA Report was long on demands for bold action and short on practical suggestions about how to cope with the crushing political backlash that boldness can breed.129 B. The Posner Dissent Posner argued that the FTC would not be able to deliver on the ABA Commission's ambitious agenda because the FTC's leaders and staff lacked the necessary incentives to do so. 130 In his view, FTC Commissioners deliberately avoided confrontation with powerful eco- nomic interests that could frustrate reappointment or deny the board member a suitable landing place in the private sector upon leaving the agency.131 Similarly, FTC staff saw little upside (and considerable downside) to being overly aggressive in enforcing the law.1a2 Posner's assessment was certainly plausible. Government service disproportionately attracts people who plan to stay, and keeping your head down is an excellent way of doing that. "Don't make waves" becomes the default strategy of the lifers, and those who are tempera-mentally unsuited to that approach either self-select out, or are ac- tively encouraged to depart. 33 But matters are not so simple. Regulators that create or adminis- ter a program that threatens major commercial interests can leave government and monetize their expertise by guiding firms through the regulatory shoals.1 34 The prosecution of big cases attracts media at- tention and raises the prominence of the officials who set them in mo- tion. This publicity often translates into attractive offers for post- government employment. Posner also overlooked the emergence of attractive career paths for aggressive enforcement officials outside the private sector. A reputation for toughness would prove to be an asset, not a barrier, for those aspiring to join university faculties, think tanks, or advocacy groups that wanted to add high visibility officials to their ranks. III. SOME LESSONS AND A FEW MODEST SUGGESTIONS People like morality tales. The conventional morality tale in- spired by the ABA Report goes like this: In 1969, the FTC had a long history of existence, but almost nothing else to recommend it.1" The ABA Report accurately diagnosed the problems and laid out a clear agenda for the FTC to redeem itself.136 The FTC followed the recom- mendations in the ABA Report, and the agency was saved. All hail the ABA Commission, and the wisdom of those who served onit.13 Of course, life is more complicated. Unambiguous morality tales are more common in children's books than in real life. 38 A close reading of the record indicates that the pre-1969 FTC was not as aw-ful, and the ABA Report was not as good, as the conventional wisdom would indicate.1 39 We consider the lessons that should be drawn and offer four "modest suggestions that may make a small difference" the next time we encounter a similar situation.140 A. Be Careful What You Demand (Or Wish For) The ABA Commission wanted the FTC to be a fierce and aggressive enforcer/regulator, and it generated a detailed list of all the things the agency had to do to justify its continued existence.141 The FTC responded aggressively to the challenge-but in so doing, it became significantly overextended. In other work, we consider a number of factors that appear to be associated with good agency performance.14 2 One of the most important factors is whether the agency has the capacity and capability to perform the tasks that it has been given (or for which it has assumed responsibility).143 An agency that is overextended will find itself engaged in a constant process of regulatory triage-meaning it is unlikely to do a good job on any of the tasks within its portfolio of responsibilities. It is one thing to launch a single bet-the-agency case and entirely another to launch a half-dozen of those cases and an equal number of significant rulemaking projects simultaneously-let alone staff each case and rulemaking project so as to maximize the likelihood of good outcomes across the entire portfolio.144 The ABA Commission set a high bar for the FTC to clear if it was to remain in business-and the FTC responded with the enforcement equivalent of building and launching an armada of 1,000 ships.145 Little thought was given by the ABA Commission (or by top FTC management) as to whether the agency was up to the task of waging the functional equivalent of multiple land wars in Asia. 146 In particular, the ABA Commission gave no attention to the time it would take the agency to build the highly skilled teams of professionals it would need to perform the ambitious agenda it had recommended. There should have been an express caution that building this capability would take time. Instead, the ABA Report's "one last chance" admonitionl47 led the FTC to take on a daunting agenda before it had the ability to deliver. This consequence arguably is one of the ABA Commission's most unfortunate legacies. The remarkable thing is that the FTC managed to do as well as it did-notwithstanding the Herculean list of labors handed to it by the ABA Commission. B. Leadership Incentives Matter Posner did not think the FTC leadership would ever be able to rouse itself from its stupor.14 8 He also could not envision a set of in- centives that would motivate the FTC to become an activist presence on the regulatory scene. 149 As detailed above, Posner's assessment on both of these issues was wrong.150 But, it does not follow that the FTC's leadership (or the leader- ship of any other agency) is subject to an optimal set of incentives. Agency leadership always faces a choice between consumption and investment-and the stakes are systematically skewed toward con- sumption (in the form of launching new high-profile cases) by the short duration of any given leader's tenure.'51 As one of us noted in another article, the case-centric approach to evaluating agency per- formance-which is what the ABA Commission effectively embraced and encouraged-has a critical vice: It accords no credit to long-term capital investments. It gives decisive weight to the initiation of new cases. This incentive system can warp the judgment of incumbent political appoin- tees who typically serve terms of only a few years. The per- ceived imperative to create new cases can create a serious mismatch between commitments and capabilities, as the si- rens of credit-claiming beckon today's manager to overlook the costs that improvident case selection might impose on the agency in the future, well after the incumbent manager has departed. It is a common aphorism in Washington that agency leaders should begin by picking the low-hanging fruit.... What is missing in the lexicon of Washington poli- cymaking is an exhortation to plant the trees that, in future years, yield the fruit.1 52 [FOOTNOTE 152 BEGINS] 152 Kovacic,supra note 144, at 922; see also Kovacic, supra note 151, at 189 ("[A] short-term perspective may incline the manager to launch headline-grabbing initiatives with inadequate regard for the matter's underlying merits or the ultimate cost to the agency, in resources and reputation, in litigating the case. If the case goes badly, the manager responsible for the take-off rarely is held to account for the crash landing. He can hope the passage of time will dim memories of his involvement, he can blame intervening agents for their poor execution of his good idea, or he can shrug his shoulders and say he was making the best of the fundamentally bad situation that policymakers encounter in the nation's capital."); Timothy J. Muris, Principlesf or a Successful Competition Agency, 72 U. CHi. L. REV. 165, 166 (2005) ("An agency head garners great attention by beginning 'bold' initiatives and suing big companies. When the bill comes due for the hard work of turning initiatives into successful regulation and proving big cases in court, these agency heads are often gone from the public stage. Their successors are left either to trim excessive proposals or even to default, with possible damage to agency reputation. The departed agency heads, if anyone in the Washington establishment now cares about their views, can always blame failure on faulty implementation by their successors."). [FOOTNOTE 152 ENDS] Thus, if anything, the ABA Commission's "do something" recommendations encouraged (and hyper-charged) precisely the wrong incentives. C. Don't Forget About Politics Perhaps the largest failing of the ABA Commission was its failure to anticipate the political risks associated with its recommendations. Academics and do-gooders will enthusiastically lecture all and sundry about how the government exists to promote the general public interest-but decades of research on political economy make it clear that there is not much of a constituency for that mission.153 Indeed, an agency that seeks to promote the general public interest is an agency without any constituency.1 54 Thus, the ABA Commission wound up and sent into battle an agency without any real constituency or political backing, to wage war against a large and politically powerful collection of firms in every sector of the economy. There is no question that the FTC was unlucky, in that many of its most enthusiastic supporters were being voted out of office at the same time the FTC was picking fights with everyone and their brother.155 But, luck aside, if you were trying to create a "coalition of the willing" determined to clip the wings of the FTC, you would be hard-pressed to pick a better strategy than the one selected by the ABA Commission.15 6

#### Fraud funds terror operations

Tierney 18, George & Mary Hylton Professor of International Relations; Director Global Research Institute (GRI) (Michael, “#TerroristFinancing: An Examination of Terrorism Financing via the Internet,” International Journal of Cyber Warfare and Terrorism, vol. 8, no. 1, 01/2018, pp. 1–11)

2. TERRORIST FINANCING AND THE INTERNET

As mentioned, terrorists’ use of the internet has become a major concern for security officials across the world in recent years. Like many other users, terrorists have found that the internet is an invaluable tool to share information quickly, in order to disseminate ideas and link up with likeminded individuals (Jacobson, 2010; Okolie-Osemene & Okoh, 2015). In this manner, terrorists use the internet for a variety of purposes, including recruitment, propaganda, and financing. As scholars have also noted, the internet is an attractive option for extremists due to the security and anonymity it provides (Jacobson, 2010). Yet while there have been a growing number of studies completed on the ways in which terrorist organizations use the internet to recruit and indoctrinate others, there has been relatively little focus on the methods by which terrorists finance themselves through online activities. Some researchers have attempted to fill gaps in this area by broadly studying internet aspects of terrorism financing. However, research on this particular aspect of terrorism financing still appears to be lacking, with little focus on new methods of terrorist financing via the internet or a marrying of strategies to combat online financing trends available to practitioners in the field.

For instance, Sean Paul Ashley (2012) assessed the mobile banking phenomenon, which is prevalent in regions such as the Middle East and Africa, and provides extremists with the ability to easily connect to the internet and remit funds around the world. The decentralization of this kind of banking, due to the fact that brick-and-mortar facilities are not needed to conduct transactions, has allowed terrorist financiersto more efficiently move funds while avoiding detection from authorities. Other researchers,such as MichaelJacobson (2010), have studied the waysin which terrorists engage in cyber-crime to raise and move funds. For example, Jacobson (2010) found that online credit card fraud was a fairly major source of terrorist financing. By stealing a victim’s private credit information, terrorists are able to co-opt needed funds and provide support to themselves or their counterparts. Yet as James Okolie-Osemene and Rosemary Ifeanyi Okoh (2015) note, the internet is mostly used to augment and assist activities which occur in the physical world. In this way, it would appear that the internet is far more useful as a means to move funds globally in support of terrorism, rather than simply as a method to raise funds.

#### Nuclear war---cash is key

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The critical issue is how a nuclear terrorist attack may “catalyze” inter-state nuclear war, especially the NC3 systems that inform and partly determine how leaders respond to nuclear threat. Current conditions in Northeast Asia suggest that multiple precursory conditions for nuclear terrorism already exist or exist in nascent form. In Japan, for example, low-level, individual, terroristic violence with nuclear materials, against nuclear facilities, is real. In all countries of the region, the risk of diversion of nuclear material is real, although the risk is likely higher due to volume and laxity of security in some countries of the region than in others. In all countries, the risk of an insider “sleeper” threat is real in security and nuclear agencies, and such insiders already operated in actual terrorist organizations. Insider corruption is also observable in nuclear fuel cycle agencies in all countries of the region. The threat of extortion to induce insider cooperation is also real in all countries. The possibility of a cult attempting to build and buy nuclear weapons is real and has already occurred in the region.[15] Cyber-terrorism against nuclear reactors is real and such attacks have already taken place in South Korea (although it remains difficult to attribute the source of the attacks with certainty). The stand-off ballistic and drone threat to nuclear weapons and fuel cycle facilities is real in the region, including from non-state actors, some of whom have already adopted and used such technology almost instantly from when it becomes accessible (for example, drones).[16]

Two other broad risk factors are also present in the region. The social and political conditions for extreme ethnic and xenophobic nationalism are emerging in China, Korea, Japan, and Russia. Although there has been no risk of attack on or loss of control over nuclear weapons since their removal from Japan in 1972 and from South Korea in 1991, this risk continues to exist in North Korea, China, and Russia, and to the extent that they are deployed on aircraft and ships of these and other nuclear weapons states (including submarines) deployed in the region’s high seas, also outside their territorial borders.

The most conducive circumstance for catalysis to occur due to a nuclear terrorist attack might involve the following nexi of timing and conditions:

1. Low-level, tactical, or random individual terrorist attacks for whatever reasons, even assassination of national leaders, up to and including dirty radiological bomb attacks, that overlap with inter-state crisis dynamics in ways that affect state decisions to threaten with or to use nuclear weapons. This might be undertaken by an opportunist nuclear terrorist entity in search of rapid and high political impact.
2. Attacks on major national or international events in each country to maximize terror and to de-legitimate national leaders and whole governments. In Japan, for example, more than ten heads of state and senior ministerial international meetings are held each year. For the strategic nuclear terrorist, patiently acquiring higher level nuclear threat capabilities for such attacks and then staging them to maximum effect could accrue strategic gains.
3. Attacks or threatened attacks, including deception and disguised attacks, will have maximum leverage when nuclear-armed states are near or on the brink of war or during a national crisis (such as Fukushima), when intelligence agencies, national leaders, facility operators, surveillance and policing agencies, and first responders are already maximally committed and over-extended.

At this point, we note an important caveat to the original concept of catalytic nuclear war as it might pertain to nuclear terrorist threats or attacks. Although an attack might be disguised so that it is attributed to a nuclear-armed state, or a ruse might be undertaken to threaten such attacks by deception, in reality a catalytic strike by a nuclear weapons state in conditions of mutual vulnerability to nuclear retaliation for such a strike from other nuclear armed states would be highly irrational.

Accordingly, the effect of nuclear terrorism involving a nuclear detonation or major radiological release may not of itself be *catalytic* of *nuclear* war—at least not intentionally–because it will not lead directly to the destruction of a targeted nuclear-armed state. Rather, it may be catalytic of non-nuclear war between states, especially if the non-state actor turns out to be aligned with or sponsored by a state (in many Japanese minds, the natural candidate for the perpetrator of such an attack is the pro-North Korean General Association of Korean Residents, often called Chosen Soren, which represents many of the otherwise stateless Koreans who were born and live in Japan) and a further sequence of coincident events is necessary to drive escalation to the point of nuclear first use by a state. Also, the catalyst—the non-state actor–is almost assured of discovery and destruction either during the attack itself (if it takes the form of a nuclear suicide attack then self-immolation is assured) or as a result of a search-and-destroy campaign from the targeted state (unless the targeted government is annihilated by the initial terrorist nuclear attack).

It follows that the effects of a non-state nuclear attack may be characterized better as a *trigger* effect, bringing about a *cascade* of nuclear use decisions within NC3 systems that shift each state increasingly away from nuclear non-use and increasingly towards nuclear use by releasing negative controls and enhancing positive controls in multiple action-reaction escalation spirals (depending on how many nuclear armed states are party to an inter-state conflict that is already underway at the time of the non-state nuclear attack); and/or by inducing concatenating nuclear attacks across geographically proximate nuclear weapons forces of states already caught in the crossfire of nuclear threat or attacks of their own making before a nuclear terrorist attack.[17]

### 1NC — P

#### Their solvency advocate doesn’t argue for an adoption of a presumption but a return to the presumption of 60s merger guidelines written after the Philadelphia National Bank (PNB) decision (KU YELLOW)

1AC 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.

#### That return happened in 2010

Hovenkamp 18 (Herbert Hovenkamp is the James G. Dinan University Professor, Penn Law and Wharton Business, University of Pennsylvania. Carl Shapiro is the Transamerica Professor of Business Strategy, Haas School of Business, University of California at Berkeley. COMMENT: “Horizontal Mergers, Market Structure, and Burdens of Proof”, 127 Yale L.J. May, 2018. Lexis, accessed online via KU Libraries, date accessed 1/8/22)

The Philadelphia National Bank Court was clearly concerned about the "rising tide of economic concentration in the American economy." 73 At the same time, however, it wished to simplify the test of illegality so that "businessmen can assess the legal consequences of a merger with some confidence." 74 As a result, "elaborate proof of market structure, market behavior, or probable anticompetitive effects" was unnecessary. This latter goal was addressed by the Merger Guidelines. The structural presumption was not originally based on any particular mechanism by which a merger would lessen competition, but rather on the general notion that competition is strongest when there are many firms, none with a large market share. The 1968 Merger Guidelines adopted this highly structural approach to merger review and enforcement, stating that "the primary role of Section 7 enforcement is to preserve and promote market structures conducive to competition." 75

The 1982 Guidelines took merger enforcement in a somewhat different direction, giving much less weight to market concentration and much more weight to the predicted competitive effects of a merger. The 1982 Merger Guidelines state, "The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance 'market power' or to facilitate its exercise." 76 Under the 1982 Merger Guidelines, the predicted competitive effects of a proposed merger were generally evaluated based on whether that merger would make cartel-like coordination more likely or more effective. That approach fit well with the structural presumption, applying George Stigler's theory that the HHI metric of market concentration also measures the risk of collusion. 77

Beginning with the 1992 Horizontal Merger Guidelines, some version of the burden-shifting framework has also been included in agency enforcement policy. The 1992 Guidelines make market share thresholds presumptive, together with language indicating that "[t]he presumption may be overcome by a showing that factors set forth [elsewhere in the Guidelines] make it unlikely that the merger will create or enhance market power or facilitate its exercise, in light of market concentration and market shares." 78

Those guidelines also state, however, that they do not "attempt to assign the burden of proof, or the burden of coming forward with evidence, on any particular issue." 79 The 2010 Guidelines actually come the closest to incorporating the presumption as it was originally articulated in Philadelphia National Bank:

The Agencies give weight to the merging parties' market shares in a relevant market, the level of concentration, and the change in concentration caused by the merger. Mergers that cause a significant increase in concentration and result in highly concentrated markets are presumed to be likely to enhance market power, but this presumption can be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power. 80 [[BEGIN FOOTNOTE 80]] 2010 MERGER GUIDELINES, supra note 13, at § 2.1.3 (citation omitted). [[END FOOTNOTE 80]]

The courts have been quite receptive to the changing structural standards in the Guidelines as they have evolved from the first set, issued in 1968, to the current 2010 Guidelines. Both the structural thresholds and the weight to be given to them have varied, and the courts have gone along--implicitly agreeing that as evidence and theory in this area change, the agencies have the discretion to respond accordingly. 81

#### VOTE NEG: The plan’s mandate is the status quo and does nothing—don’t reward poor plan writing based on a solvency advocate from 20 years ago

### 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)

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 — Big Ag

### 1NC — AT: Consolidation

#### Merger restrictions don’t stop agricultural consolidation

James M. MacDonald 1, Economic Research Service, USDA; and Marvin L. Hayenga, Iowa State University, 2001, “Concentration, Mergers, and Antitrust Policy,” https://afpc.tamu.edu/research/publications/263/macdonald.pdf

Agribusiness mergers are one strategy for large firms, and they could respond to a ban with other strategic steps. Those seeking scale economies could grow internally by building bigger facilities instead of merging. Because firms have that alternative, a merger prohibition will not necessarily halt increases in concentration based on scale economies. Second, firms could respond to a prohibition on the purchase of large agribusiness firms by purchasing other large firms in the economy and becoming conglomerates. Such moves might be particularly inefficient (cost-raising).

### 1NC — AT: Breakup

#### Break ups are only legal AFTER litigation, which ITSELF takes years.

Wheeler 20 (Tom Wheeler is an American entrepreneur and author who served as 31st Chairman of the Federal Communications Commission (FCC) from 2013-2017. He is a visiting fellow at the Brookings Institution and a senior fellow at the Harvard Kennedy School. “Digital Competition with China Starts with Competition at Home,” *Brookings*. April 2020. <https://www.brookings.edu/wp-content/uploads/2020/04/FP_20200427_digital_competition_china_wheeler_v3.pdf>)

Keeping the focus on bigness and breakup is a sleight of hand that keeps the discussion on favorable ground for the companies. The companies (and their lawyers) know that breaking up a corporation is a remedy only after the company is found to have violated the antitrust laws. Such a determination and the complexity of an antitrust case will delay any final action for years and in the end will have a low probability of success. The breakup of AT&T took nearly 10 years from the initial suit to the actual breakup. The success of any breakup lawsuit would ultimately be decided by the current Supreme Court, where a majority appears supportive of the entrenched (if recently seriously challenged) economics of the Chicago School that a narrow application of the “consumer welfare” (principally measured by price) should be the basis of antitrust enforcement.

#### That delay zeroes solvency and ensures interim circumvention.

Usman 21 (Maham Usman – JD Candidate at University of Pennsylvania. “Breaking Up Big Tech: Lessons from AT&T,” *University of Pennsylvania Law Review*. Vol. 170. May 2021. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3859441>)

Based on the analysis above, it is clear that orchestrating the breakup of a Big Tech company would be extremely complex and be much more challenging than the AT&T breakup was. This does not mean that courts should not pursue breakups as a remedy just because it would be complicated, only that care should be taken to make sure that a breakup is the best solution for efficiently remedying antitrust violations. Many scholars have posited that breakups are most useful when reversing acquisitions and spinning off previously acquired companies that would be competitive in the market.99 This is supported by the analysis above, which demonstrates how difficult it is when one intangible resource is central to the business model. However, the degree of integration of an acquired company will also play into whether or not it is good candidates for a spinoff.100 For example, in the case of Facebook, Instagram was so immediately and heavily integrated that it would likely take years for a breakup to be finalized.101 “Instagram is no longer viable outside of Facebook infrastructure. They spent years moving things over,” stated a former Facebook engineer.102 Again, the fact that a breakup would be cumbersome and lengthy is not alone a reason not to utilize a structural remedy, but time comes with a cost. A multi-year breakup would mean a lot of time for anticompetitive harms to take place, and a lot of time for companies to find clever ways to retain their competitive advantage. Also, in an industry like technology that changes so rapidly, the spinoff company—or the entire market for that matter—could be obsolete by the time the breakup is complete, and the parent Big Tech company’s business model could look completely different. On the other hand, a less integrated and more recently acquired asset like WhatsApp “would be more like a six-month technical project” since it has not been properly integrated yet.103 If courts believe that this would be a beneficial spinoff, there are few compelling reasons not to advocate for a breakup in this instance, although another source argued that preserving the quality of the service while also unwinding the merger could make WhatsApp’s spinoff also “take years.”104 Furthermore, some have speculated that “the practice of retroactively unwinding mergers will spark caution and uncertainty among businesses and presumably dim merger activity,” which is another factor that may affect the competitiveness of the market and should be considered. 105

### 1NC — AT: Mergers

#### “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 — 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

### 1NC — AT: Tam

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

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### 1NC — AT: Food Wars

#### The food impact —

#### 1 — No impact Cribb card says Canada and Russia could fill in for US shortcomings especially in food – (KU YELLOW)

1AC Cribb 19 (Julian, *Food or* War, Cambridge University Press, pp. 141-170) DB

Future Food Wars The mounting threat to world peace posed by a food, climate and ecosystem increasingly compromised and unstable was emphasised by the US Director of National Intelligence, Dan Coats, in a briefing to the US Senate in early 2019. 'Global environmental and ecological degradation, as well as climate change, are likely to fuel competition for resources, economic distress, and social discontent through 2019 and beyond', he said. 'Climate hazards such as extreme weather, higher temperatures, droughts, floods, wildfires, storms, sea level rise, soil degradation, and acidifying oceans are intensifying, threatening infrastructure, health, and water and food security. Irreversible damage to ecosystems and habitats will undermine the economic benefits they provide, worsened by air, soil, water, and marine pollution.' Boldly, Coats delivered his warning at a time when the US President, Trump, was attempting to expunge all reference to climate from government documents. 23 Based upon these recent cases of food conflicts, and upon the lessons gleaned from the longer history of the interaction between food and war, several regions of the planet face a greatly heightened risk of conflict towards the mid twentyfirst century. Food wars often start out small, as mere quarrels over grazing rights, access to wells or as one faction trying to control food supplies and markets. However, if not resolved quickly these disputes can quickly escalate into violence, then into civil conflagrations which, if not quelled, can in turn explode into crises that reverberate around the planet in the form of soaring prices, floods of refugees and the involvement of major powers — which in turn carries the risk of transnational war. The danger is magnified by swollen populations, the effects of climate change, depletion of key resources such as water, topsoil and nutrients, the collapse of ecosystem services that support agriculture and fisheries, universal pollution, a widening gap between rich and poor, and the rise of vast megacities unable to feed themselves (Figure 5.3). Each of the world's food 'powderkeg regions' is described below, in ascending order of risk. United States In one sense, food wars have already broken out in the United States, the most overfed country on Earth. Here the issue is chiefly the growing depletion of the nation's mighty ground- water resources, especially in states using it for food production, and the contest over what remains between competing users — farmers, ranchers and Native Americans on the one hand and the oil, gas and mining industry on the other. Concern about the future of US water supplies was aggravated by a series of savage droughts in the early twentyfirst century in the west, south and midwest linked to global climate change and declining snow- pack in the Rocky Mountains, both of which affect not only agriculture but also the rate at which the nation's groundwater reserves recharge. 'Groundwater depletion has been a concern in the Southwest and High Plains for many years, but increased demands on our groundwater resources have overstressed aquifers in many areas of the Nation, not just in arid regions', notes the US Geological Survey.24 Nine US states depend on groundwater for between 50 per cent and 80 per cent of their total freshwater supplies, and five states account for nearly half of the nation's groundwater use. Major US water resources, such as the High Plains aquifers and the Pacific Northwest aquifers have sunk by 30—50 metres (100—150 feet) since exploitation began, imperilling the agricultural industries that rely on them. In the arid south- west, aquifer declines of 100—150 metres have been recorded (Figure 5.4). To take but one case, the famed Ogallala Aquifer in the High Plains region supports cropping industries worth more than US $20 billion a year and was in such a depleted state it would take more than 6000 years to replace by natural infiltration the water drawn from it by farmers in the past 150 years. As it dwindles, some farmers have tried to kick their dependence on ground- water other users, including the growing cities and towns of the region, proceeded to mine it as if there was no tomorrow.25 A study by Kansas State University concluded that so far, 30 per cent of the local groundwater had been extracted and another 39 per cent would be depleted by the mid century on existing trends in withdrawal and recharge.26 Over half the US population relies on groundwater for drinking; both rural and urban America are at risk. Cities such as New Orleans, Houston and Miami face not only rising sea levels — but also sinking land, due to the extraction of underlying ground- water. In Memphis, Tennessee, the aquifer that supplies the city's drinking water has dropped by 20 metres. Growing awareness of the risk of a nation, even one as large and technologically adept as the USA, having insufficient water to grow its food, generate its exports and supply its urban homes has fuelled tensions leading to the eruption of nationwide protests over 'fracking' for oil and gas — a process that can deplete or poison groundwater — and the building -of oil pipe- lines, which have a habit of rupturing and also polluting water resources. The boom in fracking and piping is part of a deliberate US policy to become more self-reliant in fossil fuels.27 Thus, in its anxiety to be independent of overseas energy suppliers, the USA in effect decided to barter away its future food security for current oil security — and the price of this has been a lot of angry farmers, Native Americans and concerned citizens. The depletion of US groundwater coincides with accelerating climate risk, which may raise US temperatures by as much as 4—5 oc by 2100, leading to major losses in soil moisture throughout the US grain belt, and the spread of deserts in the south and west. Food production will also be affected by fiercer storms, bigger floods, more heatwaves, an increase in drought frequency and greater impacts from crop and livestock diseases. In such a context, it is no time to be wasting stored water. The case of the USA is included in the list of world 'hot spots' for future food conflict, not because there is danger of a serious shooting war erupting over water in America in the foreseeable future, but to illustrate that even in technologically advanced countries unforeseen social tensions and crises are on the rise over basic resources like food, land and water and their depletion. This doesn't just happen in Africa or the Middle East. It's a global phenomenon. Furthermore, the USA is the world's largest food exporter and any retreat on its part will have a disproportionate effect on world food price and supply. There is still plenty of time to replan America's food systems and water usage — but, as in the case of fossil fuels and climate, rear-guard action mounted by corporate vested interests and their hired politicians may well paralyse the national will to do it. That is when the US food system could find itself at serious risk, losing access to water in a time of growing climatic disruption, caused by exactly the same forces as those depleting the groundwater: the fossil fuels sector and its political stooges. The probable effect of this will, in the first instance, be a decline in US meat and dairy production accompanied by rising prices and a fall in its feedgrain exports, with domino effects on livestock industries worldwide. The flip-side to this issue is that America's old rival, Russia, is likely to gain in both farmland and water availability as the planet warms through the twentyfirst century — and likewise Canada. Both these countries stand to prosper from a US withdrawal from world food markets, and together they may negate the effects of any US food export shortfalls. Central and South America South America is one of the world's most bountiful continents in terms of food production — but, after decades of improvement, malnutrition is once more on the rise, reaching a new peak of 42.5 million people affected in 2016. 28 'Latin America and the Caribbean used to be a worldwide example in the fight against hunger. We are now following the worrisome global trend', said regional FAO representative Julio Berdegué. 29 Paradoxically, obesity is increasing among Latin American adults, while malnutrition is rising among children. 'Although Latin America and the Caribbean produce enough food to meet the needs of their population, this does not ensure healthy and nutritious diets', the FAO explains. Worsening income inequality, poor access to food and persistent poverty are contributing to the rise in hunger and bad diets, it adds.30 'The impact of climate change in Latin America and the Caribbean will be considerable because of its economic dependence on agriculture, the low adaptive capacity of its population and the geographical location of some of its countries', an FAO report warned.31 Emerging food insecurity in Central and Latin America is being driven by a toxic mixture of failing water supplies, drying farmlands, poverty, maladministration, incompetence and corruption. These issues are exacerbated by climate change, which is making the water supply issue worse for farmers and city people alike in several countries and delivering more weather disasters to agriculture. Mexico has for centuries faced periodic food scarcity, with a tenth of its people today suffering under-nutrition. In 2008 this rose to 18 per cent, leading to outbreaks of political violence. 2 In 2013, 52 million Mexicans were suffering poverty and seven million more faced extreme hunger, despite the attempts of successive governments to remedy the situation. By 2100 northern Mexico is expected to warm by 4—5 oc and southern Mexico by 1.5—2.5 oc. Large parts of the country, including Mexico City, face critical water scarcity. Mexico's cropped area could fall by 40—70 per cent by the 2030s and disappear completely by the end of the century, making it one of the world's countries most at risk from catastrophic climate change and a major potential source of climate refugees.33 The vanishing lakes and glaciers of the high Andes confront montane nations — Bolivia, Peru and Chile especially — with the spectre of growing water scarcity and declining food security. The volume of many glaciers, which provide meltwater to the region's rivers, which in turn irrigate farmland, has halved since 1975.34 Bolivia's second largest water body, the 2000 square kilometres Lake Poopo, dried out completely.35 The loss of water is attributed partly to El Niho droughts, partly to global warming and partly to over-extraction by the mining industries of the region. Chile, with 24,000 glaciers (80 per cent of all those in Latin America) is feeling the effects of their retreat and shrinkage especially, both in large cities such as the capital Santiago, and in irrigation agriculture and energy supply. Chile is rated by the World Resources Institute among the countries most likely to experience extreme water stress by 2040.36 Climate change is producing growing water and food insecurity in the 'dry corridor' of Central America, in countries such as El Salvador, Guatemala and Honduras. Here a combination of drought, major floods and soil erosion is undermining efforts to raise food production and stabilise nutrition. Food production in Venezuela began falling in the 1990s, and by the late 2010s two thirds of the population were malnourished; there was a growing flood of refugees into Colombia and other neighbouring countries. The food crisis has been variously blamed on the Venezuelan government's 'Great Leap Forward' (modelled on that of China — which also caused widespread starvation), a halving in Venezuela's oil export earnings, economic sanctions by the USA, and corruption. However, local scientists such as Nobel Laureate Professor Juan Carlos Sanchez warn that climate impacts are already striking the densely populated coastal regions with increased torrential rains, flooding and mudslides, droughts and hurricanes, while inland areas are drying out and desertifying, leading to crop failures, water scarcity and a tide of climate refugees.37 These factors will tend to deepen food insecurity towards the mid century. Venezuela's climate refugees are already making life more difficult for neighbouring countries such as Colombia. Deforestation in the Brazilian Amazon has, in recent decades, removed around 20 per cent of its total tree cover, replacing it with dry savannah and farmland. At 40 per cent clearance and with continued global warming, scientists anticipate profound changes in the local climate, towards a drying trend, which will hammer the agriculture that has replaced the forest.38 Brazil has already wiped out the once- vast Mata Atlantica forest along its eastern coastline, and this region is now drying, with resultant water stress for both farming and major cities like Säo Paulo. Brazil's outlook for 2100 is for further drying — tied to forest loss as well as global climate change — increased frequency of drought and heatwaves, major fires and acute water scarcity in some regions. Moreover, as the Amazon basin dries out, if will release vast quantities of C02 from its peat swamps and rainforest soils. These are thought to contain in excess of three billion tonnes of carbon and could cause a significant acceleration in global warming, affecting everyone on Earth. 39 Latin America is the world capital of private armies, with as many as 50 major guerrilla groups, paramilitaries, terrorist, indigenous and criminal insurgencies over the past half century exemplified in familiar names like the Sandanistas (Nicaragua), FARC (Colombia) and Shining Path (Peru). 40 Many of these drew their initial inspiration from the international communist movement of the mid twentieth century, while others are right-wing groups set up in opposition to them or else represent land rights movements of disadvantaged groups. However, all these movements rely for oxygen on simmering public discontent with ineffectual or corrupt governments and lack of fair access to food, land and water generally. In other words, the tendency of South and Central America towards internal armed conflict is supercharged significantly by failings in the food system which generate public anger, leading to sympathy and support for anyone seen to be challenging the incumbent regimes. This is not to suggest that feeding every person well would end all insurgencies — but it would certainly take the wind of popular support out of a lot of their sails. In that sense the revolutionary tendency of South America echoes the preconditions for revolution in France and Russia in the eighteenth and twentieth centuries. Central Asia The risk of wars breaking out over water, energy and food insecurity in Central Asia is high.41 Here, the five main players — Kazakhstan, Uzbekistan, Turkmenistan, Tajikistan and Kyrgyzstan — face swelling populations, crumbling Soviet-era infrastructure, flagging resource cooperation, a degrading land- scape, deteriorating food availability and a changing climate. At the heart of the issue and the region's increasingly volatile politics is water: 'Without water in the region's two great rivers — the Syr Darya and the Amu Darya — vital crops in the down- stream agricultural powerhouses would die. Without power, life in the upstream countries would be unbearable in the freezing winters' , wrote Rustam Qobil. Central Asia's water crisis first exploded onto the global consciousness with the drying of the Aral Sea — the world's fourth largest lake — from the mid 1960s43, following the damming and draining of major rivers such as the Amu Darya, Syr Darya and Naryn. It was hastened by a major drought in 200844 exacerbated by climate change, which is melting the 'water tower' of glacial ice stored in the Tien Shan, Pamir and Hindu Kush mountain ranges that feed the region's rivers. The Tien Shan alone holds 10,000 glaciers, all of them in retreat, losing an estimated 223 million cubic metres a year. At such a rate of loss the region's rivers will run dry within a generation.45 Lack of water has already delivered a body blow to Central Asia's efforts to modernise its agriculture, adding further tension to regional disputes over food, land and water. 'Water has always been a major cause of wars and border conflicts in the Central Asian region', policy analyst Fuad Shahbazov warned. This potential for conflict over water has been exacerbated by disputes over the Fergana valley, the region's greatest foodbowl, which underwent a 32 per cent surge in population in barely ten years — while more and more of it turned to desert.46 The Central Asian region is ranked by the World Resources Institute as one of the world's most perilously water-stressed regions to 2040 (Figure 5.6). With their economies hitting rock bottom, corrupt and autocratic governments that prefer to blame others for their problems and growing quarrels over food, land, energy and water, the 'Stans' face 'a perfect storm', Nate Shenkkan wrote in the journal Foreign Policy 47 Increased meddling by Russia and China is augmenting the explosive mix: China regards Central Asia as a key component of its 'Belt and Road' initiative intended to expand its global influence, whereas Russia hopes to lure the region back into its own economic sphere. Their rival investments may help limit some of the problems faced by Central Asia — or they may unlock a fresh cycle of political feuding, turmoil and regime change.48 A 2017 FAO report found 14.3 million people — one in every five — in Central Asia did not have enough to eat and a million faced actual starvation, children especially. It noted that after years of steady improvement, the situation was deteriorating. This combination of intractable and deteriorating factors makes Central Asia a serious internal war risk towards the mid twentyfirst century, with involvement by superpowers raising the danger of international conflict and mass refugee flight. The Middle East The Middle East is the most water-stressed region on Earth (see Figure 5.5 above). It is 'particularly vulnerable to climate change. It is one of the world's most water-scarce and dry regions, with a high dependency on climate-sensitive agriculture and a large share of its population and economic activity in flood-prone urban coastal zones', according to the World Bank. 49 The Middle East — consisting of the 22 countries of the Arab League, Turkey and Iran — has very low levels of natural rainfall to begin with. Most of it has 600 millimetres or less per year and is classed as arid. 'The Middle East and North Africa [MENA] is a global hotspot of unsustainable water use, especially of ground- water. In some countries, more than half of current water withdrawals exceed what is naturally available', the Bank said in a separate report on water scarcity. 50 'The climate is predicted to become even hotter and drier in most of the MENA region. Higher temperatures and reduced precipitation will increase the occurrence of droughts. It is further estimated that an additional 80—100 million people will be exposed by 2025 to water stress', the Bank added. The region's population of 300 million in the late 2010s is forecast to double to 600 million by 2050. Average temperatures are expected to rise by 3—5 oc and rainfall will decrease by around 20 per cent. The result will be vastly increased water stress, accelerated desertification, growing food insecurity and a rise in sea levels displacing tens of millions from densely popu- lated, low-lying areas like the Nile delta.51 The region is deemed highly vulnerable to climate impacts, warns a report by the UN Development Programme. 'Current climate change projections show that by the year 2025, the water supply in the Arab region will be only 15 per cent of levels in 1960. With population growth around 3 per cent annually and deforestation spiking to 4 per cent annually... the region now includes 14 of the world s 20 most water-stressed countries.'52 The Middle Fast/North Africa (MENA) region has 6 per cent of the world's population with only 1.5 per cent of the world's fresh water reserves to share among them. This means that the average citizen already has about a third less water than the minimum necessary for a reasonable existence — many have less than half, and populations are growing rapidly. Coupled with political chaos and ill governance in many countries, growing religious and ethnic tensions between different groups — often based on centuries-old disputes — a widening gap between rich and poor and foreign meddling by the USA, Russia and China, shortages of food, land and water make the Middle East an evident cauldron for conflict in the twentyfirst century. Growing awareness of their food risk has impelled some oil-rich Arab states into an international farm buying spree, purchasing farming, fishing and food processing companies in countries as assorted as South Sudan, Ethiopia, the Philippines, Ukraine, the USA, Poland, Argentina, Australia, Brazil and Morocco. In some food-stressed countries these acquisitions have already led to riots and killings.53 The risk is high that, by exporting its own food—land—water problems worldwide, especially to regions already facing scarcity, the Middle East could propagate conflicts and government collapses around the globe. This is despite the fact that high-tech solar desalination, green energy, hydroponics, aquaponics and other intensive urban food production technologies make it possible for the region to produce far more of its own food locally, if not to be entirely self-sufficient. Dimensions of the growing crisis in the Middle East include the following. Wars have already broken out in Syria and Yemen in which scarcity of food, land and water were prominent among the tensions that led to conflict between competing groups. Food, land and water issues feed into and exacerbate already volatile sentiment over religion, politics, corruption, mismanagement and foreign interference by the USA, China and Russia. The introduction of cheap solar-powered and diesel pumps has accelerated the unsustainable extraction of groundwater throughout the region, notably in countries like Libya, Egypt, Saudi Arabia and Morocco. 54 Turkish building of new dams to monopolise waters flowing across its borders is igniting scarcity and potential for conflict with downstream nations, including Iraq, Iran and Syria. 55 Egypt's lifeline, the Nile, is threatened by Ethiopian plans to dam the Blue Nile, with tensions that some observers consider could lead to a shooting war. 56 There are very low levels of water recycling throughout the region, while water use productivity is about half that of the world as a whole. There is a lack of a sense of citizen responsibility for water and food scarcity throughout the region. Land grabs around the world by oil-rich states are threatening to destabilise food, land and water in other countries and regions, causing conflict. A decline in oil prices and the displacement of oil by the global renewables revolution may leave the region with fewer economic options for solving its problems. There is a risk that acquisition of a nuclear weapon by Iran may set off a nuclear arms race in the region with countries such as Saudi Arabia, Syria and possibly Turkey following suit and Israel rearming to stay in the lead. This would translate potential food, land and water conflicts into the atomic realm. Together these issues, and failure to address their root causes, make the Middle East a fizzing powder keg in the twentyfirst century. The question is when and where, not whether, it explodes — and whether the resulting conflict will involve the use of weapons of mass destruction, including nuclear, thus affecting the entire world. China China is the world's biggest producer, importer and consumer of food. Much of the landmass of the People's Republic of China (PRC) is too mountainous or too arid for farming, but the rich soils of its eastern and southern regions are highly productive provided sufficient water is available and climate impacts are mild. Those, however, are very big 'ifs'. In 1995, American environmentalist Lester R. Brown both Eked and aroused the PRC Communist Party bosses with a small, hard-hitting book entitled Who Will Feed China? Wake-Up Call for a Small Planet.57 In it he posited that Chinese population growth was so far out of control that the then-agricultural system could not keep up, and China would be forced to import vast amounts of grain, to the detriment of food prices and availability worldwide. His fears, so far, have not been realised — not because they were unsoundly based, but because China managed — just — to stay abreast of rising food demand by stabilising and subsidising grain prices, restoring degraded lands, boosting agricultural science and technology, piping water from south to north, developing high-intensity urban farms, buying up foreign farmland worldwide and encouraging young Chinese to leave the country. What Brown didn't anticipate was the economic miracle that made China rich enough to afford all this. However, his essential thesis remains valid: China's food supply will remain on a knife-edge for the entire twentyfirst century, vulnerable especially to water scarcity and climate impacts. If the nation outruns its domestic resources yet still has to eat, it may well be at the expense of others globally. Some western commentators were puzzled when China scrapped its 35-year 'One Child Policy' in 2015, but in fact the policy had done its job, shaving around 300 million people off the projected peak of Chinese population. It was also causing serious imbalances, such as China's huge unmarried male sur- plus. Furthermore, rising urbanisation and household incomes meant Chinese parents no longer wanted large families, as in the past. Policy or no policy, China's birthrate has continued to fall and by 2018 was 1.6 babies per woman — well below replacement, lower than the USA and nearly as low as Germany. Its population was 1.4 billion, but this was growing at barely 0.4 per cent a year, with the growth due at least in part to lengthening life expectancy. 58 For China, female fertility is no longer the key issue. The critical issue is water. And the critical region is the north, where 41 per cent of the population reside. Here surface and ground- waters — which support not only the vast grain and vegetable farming industries of the North China Plain but also burgeoning megacities like Beijing, Tianjin and Shenyang — have been vanishing at an alarming rate. 'In the past 25 years, 28,000 rivers have disappeared. Groundwater has fallen by up to 1—3 metres a year. One consequence: parts of Beijing are subsiding by 11 cm a year. The flow of the Yellow River, water supply to millions, is a tenth of what it was in the 1940s; it often fails to reach the sea. Pollution further curtails supply: in 2017 8.8 per cent of water was unfit even for agricultural or industrial use', the Financial Times reported.59 On the North China Plain, annual consump- tion of water for all uses, including food production, is about 27 billion cubic metres a year — compared with an annual water availability of 22 billion cubic metres, a deficit that is made up by the short-term expedient of mining the region's groundwater. 60 To stave off disaster, the PRC has built a prodigious network of canals and pipelines from the Yangtse River in the water-rich south, to Beijing in the water-starved north. Hailed as a 'lifeline', the South—North Water Transfer Project had two drawbacks: first, the fossil energy required to pump millions of tonnes of water over a thousand kilometres and, second, the fact that while the volume was sufficient to satisfy the burgeoning cities for a time, it could not supply and distribute enough clean water to meet the needs of irrigated farming over so vast a region in the long run, nor meet those of its planned industrial growth.61 Oft-mouthed 'solutions' like desalination or the piping of water from Tibet or Russia face similar drawbacks: demand is too great for the potential supply and the costs, both financial and environmental, prohibitive. China is already among the world's most water-stressed nations. The typical Chinese citizen has a 'water footprint' of 1071 cubic metres a year — three quarters of the world average (1385 cubic metres), and scarcely a third that of the average American (2842 cubic metres).62 Of this water, 62 per cent is used to grow food to feed the Chinese population — and 90 per cent is so polluted it is unfit to drink or use in food processing. Despite massive investment in water infrastructure and new technology, many experts doubt that China can keep pace with the growth in its demand for food, at least within its own borders, chiefly because of water scarcity.63 Adding to the pressure is that China's national five-year plans for industrialisation demand massive amounts more water — demands that may confront China with a stark choice between food and economic growth. 'The Chinese government is moving too slowly towards the Camel Economy. It has plans, incentives for officials; it invests in recycling, irrigation, pollution, drought resistant crops; it leads the world in high voltage transmission (to get hydro, wind and solar energy from the west of China). None of this is sufficient or likely to be in time', the Financial Times opined. As the world's leading carbon emitter, China is more responsible for climate change than any other country. It is also, potentially, more at risk. The main reason, quite simply, is the impact of a warming world on China's water supply — in the form of disappearing rivers, lakes, groundwater and mountain glaciers along with rising sea levels. To this is coupled the threat to agriculture from increasing weather disasters and the loss of ecosystem services from a damaged landscape. 65 China is thus impaled on the horns of a classic dilemma. Without more water it cannot grow its economy sufficiently to pay for the water-conserving and food-producing technologies and infrastructure it needs to feed its people. Having inadvertently unleashed a population explosion with its highly successful conversion to modern farming systems, the challenge for China now is to somehow sustain its food supply through the population peak of the mid twentyfirst century, followed by a managed decline to maybe half of today's numbers by the early twentysecond century. It is far from clear whether the present approach — improving market efficiency, continuing to modernise agricultural production systems, pumping water, trying to control soil and water losses and importing more food from overseas will work. 66 China has pinned its main hopes on technology to boost farm yields and improve water distribution and management. Unfortunately, it has selected the unsustainable American industrial farming model to do this — which involves the massive use of water, toxic chemicals, fertilisers, fossil fuels and machines. This in turn is having dreadful consequences for China's soils, waters, landscapes, food supply, air, climate and consumer health. Serious questions are now being asked whether such an approach is not digging the hole China is in, even deeper. Furthermore, some western analysts are sceptical whether the heavy hand of state control is up to the task of generating the levels of innovation required to feed China sustainably.67 Plan B, which is to purchase food from other countries, or import it from Chinese-owned farming and food ventures around the world, faces similar difficulties. Many of the countries where China is investing in food production themselves face a slow-burning crisis of land degradation, water scarcity, surging populations and swelling local food demand. By exporting its own problems, China is adding to their difficulties. While there may be some truth to the claim that China is helping to modernise food systems in Africa, for example, it is equally clear that the export of food at a time of local shortages could have dire consequences for Africans, leading to wars in Africa and elsewhere. How countries will react to Chinese pressure to export food in the face of their own domestic shortages is, as yet, unclear. If they permit exports, it could prove cata- strophic for their own people and governments — but if they cut them off, it could be equally catastrophic for China. Such a situation cannot be regarded as anything other than a menace to world peace. Around 1640, a series of intense droughts caused widespread crop failures in China, leading to unrest and uprisings which, in 1644, brought down the Ming Dynasty. A serious domestic Chinese food and water crisis today — driven by drought, degradation of land and water and climate change in northern China coupled with failure in food imports — could cause a re-run of history: 'The forthcoming water crisis may impact China's social, economic, and political stability to a great extent', a US Intelligence Assessment found. The adverse impacts of climate change will add extra pressure to existing social and resource stresses.' 68 Such events have the potential to precipitate tens, even hundreds, of millions of emigrants and refugees into countries all over the world, with domino consequences for those countries that receive them. Strategic analysts have speculated that tens of millions of desperate Chinese flooding into eastern Russia, or even India, could lead to war, including the risk of international nuclear exchange. 69 Against such a scenario are the plain facts that China is a technologically advanced society, with the foresight, wealth and capacity to plan and implement nationwide changes and the will, if necessary, to enforce them. Its leaders are clearly alert to the food and water challenge — and its resolution may well depend on the extent of water recycling they are able to achieve. As to whether the PRC can afford the cost of transitioning from an unsustainable to a sustainable food system, all countries have a choice between unproductive military spending and feeding their populace. A choice between food or war. It remains to be seen which investment China favours. However, it is vital to understand that the problem of whether China can feed itself through the twentyfirst century is not purely a Chinese problem. It's a problem, both economic and physical, for the entire planet — and it is thus in everyone's best interest to help solve it. For this reason, China is rated number 3 on this list of potential food war hotspots. Africa Food wars — that is, wars in which food, land and water play a significant contributing role — have been a constant in the story of Africa since the mid twentieth century, indeed, far longer. In a sense, the continent is already a microcosm of the world of the twentyfirst century as climate change and resource scarcity com- bine with rapid population growth to ratchet up the tensions that lead competing groups to fight, whether the superficial distinc- Mons between them are ethnic, religious, social or political. We have examined the particular cases of Rwanda, South Sudan and the Horn of Africa — but there are numerous other African conflicts, insurgencies and ongoing disturbances in which food, land and water are primary or secondary triggers and where famine is often the outcome: Nigeria, Congo, Egypt, Tunisia, Libya, Mali, Chad, the Central African Republic, the Maghreb region of the Sahara, Mozambique, Cote d'Ivoire and Zimbabwe have all experienced conflicts in which issues of access to food, land and water were important drivers and consequences. The trajectory of Africa's population in the first two decades of the twentyfirst century implies that the number of its people could quadruple from 1.2 billion in 2017 to 4.5 billion by 2100 (Figure 5.6). If fulfilled, this would make Africans 41 per cent of the world population by the end of the century. The UN Popula- tion Division's nearer projections are for Africans to outnumber Chinese or Indians at 1.7 billion by 2030, and reach 2.5 billion in 2050, which represents a doubling in the continent's inhabitants in barely 30 years. 70 While African fertility rates (babies per woman) remain high by world standards — 4.5 compared with a global average of 2.4 — they have also fallen steeply, from a peak of 8.5 babies in the 1970s. Furthermore, the picture is uneven with birthrates in most Sub-Saharan countries remaining high (around five to six babies/woman), while those of eight, mainly southern, countries have dropped to replace- ment or below (i.e. under 2.1). As has been the case around the world, birth rates tend to drop rapidly with the spread of urban isation, education and economic growth — whereas countries which slide back into poverty tend to experience rising birth- rates. Food access is a vital ingredient in this dynamic: it has been widely observed that better-fed countries tend to have much lower rates of birth and population growth, possibly because people who are food secure lose fewer infants and children in early life and thus are more open to family planning. So, in a real sense, food sufficiency holds one of the keys to limiting the human population to a level sustainable both for Africa and the planet in general. Forecasting the future of Africa is not easy, given the complexity of the interwoven climatic, social, technological and political issues — and many do not attempt it. However, the relentless optimism of the UN and its food agency, the FAO, is probably not justified by the facts as they are known to science — and may have more to do with not wishing to give offence to African governments or discourage donors than with attempting to accurately analyse what may occur. Even the FAO acknowledges however that food insecurity is rising across Sub-Saharan Africa as well as other parts. In 2017, conflict and insecurity were the major drivers of acute food insecurity in 18 countries and territories where almost 74 million food-insecure people were in need of urgent assistance. Eleven of these countries were in Africa and accounted for 37 million acutely food insecure people; the largest numbers were in northern Nigeria, Demo- cratic Republic of Congo, Somalia and South Sudan the agency said in its Global Report on Food Crises 2018.71 The FAO also noted that almost one in four Africans was undernourished in 2016 — a total of nearly a quarter of a billion people. The rise in undernourishment and food insecurity was linked to the effects of climate change, natural disasters and conflict according to Bukar Tijani, the FAO's assistant director general for Africa. 72 Even the comparatively prosperous nation of South Africa sits on a conflict knife-edge, according to a scientific study: 'Results indicate that the country exceeds its environmental boundaries for biodiversity loss, marine harvesting, freshwater use, and climate change, and that social deprivation was most severe in the areas of safety, income, and employment, which are significant factors in conflict risk', Megan Cole and colleagues found. 73 In the Congo, home to the world's second largest tropical forest, 20 years of civil war had not only slain five million civilians but also decimated the forests and their ecological services on which the nation depended. Researchers found evidence that reducing conflict can also help to reduce environ- mental destruction: 'Peace-building can potentially be a win for nature as well, and.. conservation organizations and govern- ments should be ready to seize conservation opportunities'. 74 As the African population doubles toward the mid century, as its water, soils, forests and economic wealth per capita dwindle, as foreign corporations plunder its riches, as a turbulent climate hammers its herders and farmers — both industrial and traditional — the prospect of Africa resolving existing conflicts and avoiding new ones is receding. The mistake most of the world is making is to imagine this only affects the Africans. The consequences will impact everyone on the planet. A World Bank study has warned that 140 million people will have to leave just three regions of the world as climate refugees before 2050 — and the vast majority of these, some 86 million, would be displaced from their homes in Sub-Saharan Africa. 75 The second decade of the twentyfirst century has already witnessed a blow-out in the number of Sub-Saharan Africans fleeing north, across the desert into the already dangerously overstressed region of North Africa. From there many have headed by boat for Europe, with shocking loss of life on the way — up to 5000 deaths due to drowning in a single year. The number of Africans fleeing across the Mediterranean has fluctuated, climbing as high as a third of a million people (in 2016) with most of them headed for Italy, followed by Greece, Cyprus and Spain. By this time Europe already had a population of five million Sub-Saharans. 76 It is worth recalling, for a moment, that a food failure in the North African grainbowl in the third and fourth centuries was a primary factor in the collapse and demolition of the Roman Empire, from Britain to Asia Minor. The risk of a tsunami of people attempting to escape Africa for Europe, and to a lesser degree the Middle East, in coming decades is building with ominous intensity. The stress in Sub- Saharan Africa is already forcing conditions in North African countries closer to crisis point. Were their food systems to fail in domino-succession, the scale of potential movement of desperate people into Europe can only be guessed — but is certainly in the range of tens to hundreds of millions. Large enough, in other words, to swamp the nations of Italy, Spain and Greece and eliminate their governments altogether, forcing many of their own people in turn to flee into northern Europe. Given the crisis caused by a million Syrians fleeing into Europe in 2013, the consequences for European stability and the world economy of an African eruption tens or hundreds of times the size can only be imagined. The good news is that, in the view of the World Bank, up to 80 per cent of Africa's climate refugees could be prevented from leaving their homes in the first place by timely climate and development (i.e. food, land and water) action taken by the rest of the world. The bad news, however, is that most of the world's large oil and coal companies and their climate-denying puppet governments remain implacably opposed to the sort and scale of action necessary, preferring to pull the global house down on their own heads. Canadian ecologist Paul Chefurka argued in a far-sighted paper that the outlook for Africa by 2040 was grim, even if the contin- ent were able to lock in a 1 per cent year-on-year increase in farm yields. Even then Africa might still be forced to spend half its wealth — an almost impossible proportion — on food imports by 2050, assuming sufficient affordable food was available globally to supply them. Chefurka argued the solutions were: First, the developed world must get its act together when it comes to foreign aid. Our lack of performance with regard to the Millennium Development Goals is beyond contemptible. A minuscule sliver of the GDP of the richest nations could help prevent a catastrophic outcome for hundreds of millions of people and scores of countries. That we have failed our African brothers and sisters so egregiously is a shame that should follow all of us into the afterlife. Second, and most importantly, we must develop an immediate crash program of education and contraception in all the regions at risk from this gathering storm. Africa may be the first, but the conditions are ripe for much of South Asia to follow in their footsteps. We must blanket Africa with schools and family planning clinics. 77 There is substance to both points. Unfortunately expanding conventional farming with a view to feeding all the Africans in 2050 and 2100 is unlikely to succeed. It is a twentieth-century solution to a twentyfirst-century problem, even with more advanced farming technologies added. It would unleash cataclysmic soil and water loss, gross pollution, the spread of deserts and animal, plant and human diseases, accelerate climate change (through land clearing and the use of fossil fuels and fertilisers) and extinguish the last of Africa's wildlife. The combined outcome of this would be war, potentially on a continent-wide scale — and it is for this reason Africa ranks second on this list of world food and war hotspots. Where the true solutions to Africa's and the world's food challenges may lie is dealt with in the concluding chapters of this book. South Asia The constellation of burgeoning food demand, water scarcity, degrading land, a turbulent climate, social, political and religious feuding and rampant militarisation make the region of South Asia — India, Pakistan, Bangladesh and Sri Lanka — the most dangerous of all for civilisation during the twentyfirst century. The population of the region has more than tripled since the 1960s. India alone is looking at a population of 1.73 billion by 2050, Pakistan at 306 million, Bangladesh 202 million and Sri Lanka at 23 million — a combined total approaching 2.3 billion 78 The Indo-Gangetic Plain is the bread-basket of the three largest countries and currently feeds more than 900 million from both surface and groundwater. 'India is facing a perfect storm in managing water. Centuries of mismanagement, political and institutional incompetence, indifference at central, state and municipal levels, a steadily increasing population that will reach an estimated 1.7 billion by 2050, a rapidly mushrooming middle class demanding an increasingly protein-rich diet that requires significantly more water to produce — together, these are leading the country towards disaster', says Professor Asit Biswas of the National University of Singapore. 79 'India is now facing a water situation that is significantly worse than any that previous generations have had to face. All Indian water bodies within and near population centres are now grossly polluted... Not a single Indian city can provide clean water that can be consumed from the tap on a 24x 7 basis', he adds. This was underlined by a warning from the Indian Supreme Court in 2018 that the capital, New Delhi population 25 million — was on track to run out of groundwater completely. go Facing similar water scarcity were 20 other Indian cities, including Bangalore and Hyderabad — heartbeat of the Indian high-tech boom — menacing the lives and jobs of 600 million Indians. 81 Free electricity and cheap diesel pumps led to an explosion in the extraction of groundwater across the Indo-Gangetic plain. 'The best estimate is that at present India uses 230—250 cubic kilometres of groundwater each year. This accounts for about one-quarter of the global groundwater use. More than 60% of irrigated agriculture and 85% of domestic water use now depends on groundwater.' Over large areas, India's groundwater levels have been falling precipitously, in places at rates of a metre or more a year, si\_nce the start of the twentyfirst century and scientists fear its reserves will be largely exhausted by 2050.82 The World Resources Institute, which keeps a hawk-like gaze on global water issues, notes that more than half of India is already water stressed, affecting more than 600 million people — and the situation will become extremely grave towards 2040 (Figure 5.7).83 Climate change is only making matters worse for South Asia — the rising intensity of droughts, floods and heatwaves threatens to undermine the region's fragile ability to feed itself. Indeed, according to some projections, parts will be so hot as to become uninhabitable and unfarmable. 84 Recent climate modelling identified India as the world's second most vulnerable country for climate-related hunger, and Bangladesh third, with the situation worsening towards 2 oc of global warming. 85 The Indian Minis- try of Finance concurs, warning that climate could shrink agricultural incomes by as much as 25 per cent in unirrigated farmland and 18 per cent in irrigated areas by 2100.86 South Asia's main water reserve, the glacial ice of the Hindu Kush and Himalaya which supports two billion people, is in dire straits, according to a study by 210 scientists. A third of it will be gone by 2100, in a 'climate crisis you haven't heard of, said lead author Philippus Wester. Its loss due to global warming holds catastrophic consequences for rivers, groundwater, food production and the cities that rely on it. 87 'Climate change is likely to have a detrimental effect on South Asia out to 2030 and beyond, mainly because of its ability to exacerbate one of South Asia's biggest challenges: an expanding population and the challenge of feeding, housing, clothing, watering and employing it', wrote analyst Benjamin Walsh.88 Melting glaciers, increased evaporation and swelling cities are all intensifying existing food and water insecurity and, since cli- mate change cannot be prevented in the short run, governments had better prepare for it, he said. In this sense, Walsh and Biswas tender similar advice: whether or not South Asia can ride out the 'perfect storm' will depend on the competence and determination of hitherto somewhat inept governments in taking the essential steps to conserve water and find new ways to produce food. The subcontinent's existing food and water model is broken and cannot survive the mid century. On the positive side is the enthusiasm with which South Asia has embraced renewable energy and the IT revolution, expressed in the region's strong economic growth. These demonstrate that vast and rapid national and regional changes are possible. Water, land and food, however, present far more intractable problems — social, political and technical — on which age-old disputes over religion, ethnicity and caste lie like a pall. Since India and Pakistan partitioned in 1947, there has been ongoing low-level conflict over the waters of the Indus and the territory of Kashmir. Pakistan considers India is stealing its water and trying to assert hegemony through dam-building, while India claims Pakistan is losing water due to climate change: the scarcer water becomes for either country, the more the tensions escalate. Both sides are heavily armed: India has 2.1 million soldiers under arms, and Pakistan 644,000. Both nations have 120+ nuclear warheads. Between them, they spend US $65 billion a year on their militaries.89 How close they have been to open war is highlighted by legal expert Dr Waseem Quereshi: 'The tension over water conflicts between India and Pakistan has been soaring. India has threatened that it will scrap the IWT [Indus Waters Treaty] entirely. In response, Pakistan has stated that such a revocation of a bilaterally agreed treaty would be considered an act of war' 90 Large-scale food, land and water failures anywhere on the Indian subcontinent could spark immense refugee movements in the tens or hundreds of millions, capable of obliterating neighbour countries and igniting wars. They are liable to be on a scale that dwarfs the Syrian refugee problem into insignificance, with worldwide repercussions. For example, some 130 million people on the subcontinent inhabit low-lying coastal regions that will be under the sea by 210091, and that is but a single dimension of the climate—water crisis. The World Bank rates the Indian subcontinent the world's second most vulnerable region for enforced climate migration, with 40 million climate refugees alone in India by 2050.92 These estimates take no account of the scale of migration that could result from major failures in food or water, or people fleeing resulting conflicts. The scenario of major collapse in the South Asian food and water system is so appalling that no government or agency, as yet, seems prepared even to contemplate its possibility, or to risk the displeasure of South Asian governments and peoples by speaking openly about it. As a result, the world at large is doing little to forestall or prevent it. However, for whatever the vox populi is worth, when the website Debate.org asked readers to vote on the question "Will India Collapse?" , 76 per cent of respond- ents (mostly Indians) were of the view that it would.93 The Oslo Peace Research Institute, in a rather more structured attempt to predict the likelihood of future conflicts based on past behaviour, rated Pakistan, India, Afghanistan and Sri Lanka among the countries more likely to face wars up to 2050.94 The great issue for humanity is South Asia's combined arsenal of 250+ nuclear weapons. Though many of these are thought to be 'battlefield' or tactical nukes (as opposed to city busters), there are enough of them to cause a worldwide famine affecting everybody and lasting several years. This insight arises out of the increasing sophistication of global climate models, which can now describe the impact of nuclear release on the global climate system with far greater precision than ever before. Meteorologist Alan Robock from Rutgers University and physicist Brian Toon from the University of Colorado have devoted 30 years to projecting the effects of nuclear war. They estimate that a limited nuclear exchange between India and Pakistan would throw up at least five million tonnes of dust and smoke from burning forests and incinerated cities, lofting it into the high atmosphere where it will linger for up to 20 years. In climatic terms, this would be the equivalent of an asteroid impact on Earth or a large volcanic eruption, they said — enough to unleash a worldwide 'nuclear winter' .95 'We put it into a NASA climate model and found it would be the largest climate change in recorded human history', Brian Toon told a journalist. 'The basic physics is very simple. If you block out the Sun, it gets cold and dark at the Earth's surface'. He continued: 'We hypothesized that if each country used half of their nuclear arsenal, that would be 50 weapons on each side. We assumed the simplest bomb, which is the size dropped on Hiroshima and Nagasaki — a 15 kiloton bomb. The answer is the global average temperature would go down by about 1.5 degrees Celsius. In the middle of continents, temperature drops would be larger and last for a decade or more'. The effects of this snap cooling on agriculture worldwide were then calculated. The answer was equally chilling: harvests would crash by 20—40 per cent for five years, and for the next five years, linger 10—20 per cent below the pre-war norm. This would result in malnourishment, if not outright starvation, for most of the world's population (Figure 5.8) Such an event would be more severe than the Little Ice Age of the eighteenth century — which was, it may be recalled, a likely contributing factor in the hunger that led to the French Revolu- tion — or the cool period that brought down the Roman Empire in the fourth century. In today's overcrowded world it would unleash global hunger, reducing the average daily caloric intake from 2900 to 1900—2000 calories or fewer, which is borderline malnutrition. For people already hungry, such an outcome would be fatal. Yet that is not the worst of it. A report by International Physicians for the Prevention of Nuclear War (IPPNW) concluded that China, lying immediately downwind of India/Pakistan, would be worst affected by the nuclear winter effects of even a limited atomic war in South Asia. Chinese winter wheat produc- tion would fall by up to half, and the rice crop by 21 per cent. Two billion people in India and China would starve within months, government in both countries would probably disintegrate and, in an echo of their own and Roman histories, the remnants of society would doubtless be riven among local war. lords. Most of the nations of Southeast, West, North and Central Asia on their borders would be swept away before the tide of people fleeing the catastrophe.97 How such events would play out for the rest of the world are not easy to predict — but, in all likelihood, the panic occasioned by rising global hunger, soaring global food prices and the loss of two of its largest traders would crash the world economy, top- pling more governments and igniting further civil and inter- national conflict, some of it potentially nuclear. Thus, even a relatively limited nuclear exchange, such as between India and Pakistan, could bring civilisation as we know it to an end. From this brief assessment it can be seen that the Indian subcontinent, more than any region on Earth, holds the key to the future of world food security and hence, the fate of civilisation in this century. For this reason, the South Asian region is rated as the Number One Risk on this 11St, in terms of food, land and water insecurity and conflict risk, above all others.

#### 2 — there is no internal link — US exports don’t go to countries that need the food

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.

#### 3 — Food insecurity leads to protests that decrease the risk of interstate war

Barrett ’13 (Christopher B. Barrett – Deputy Dean and Dean of Academic Affairs of the College of Business, Stephen B. and Janice G. Ashley Professor of Applied Economics and Management, and an International Professor of Agriculture, all at the Charles H. Dyson School of Applied Economics and Management, as well as a Professor in the Department of Economics and a Fellow of the David R. Atkinson Center for a Sustainable Future, all at Cornell University, “Food Security and Sociopolitical Stability,” 26 September 2013, Google Books)

The simplest definition of sociopolitical stability is the absence of coordinated human activities that cause widespread disruption of daily life for local populations. Note that this excludes violent personal crimes, such as murder, and natural disasters. But this definition encompasses a continuum of activities that we can array according to the magnitude of their human consequences, from nonviolent riots or large-scale political protests and work stoppages at one end, through violent versions of such organized actions, to guerilla movements and terrorism by state and non-state actors, to outright civil war, and finally to interstate war at the other. Boulding (1978) defined peace as the absence of war and emphasized that peace does not require the resolution of all conflicts within or among nations, merely that such conflict remain nonviolent. As used here and in the rest of this volume, stability is an even more Utopian state than mere peace. For example, many of the food riots of the past several years proved extremely disruptive to the populations affected—and threatening to governments—but did not turn violent, at least in the sense of causing deaths. We consider such events moments of instability, even though peace prevailed.

This sort of hierarchical ordering is instructive, as it underscores two fundamental points made directly or indirectly by multiple contributors to this volume. First, not all instability is bad. When peaceful, structured, political, legal, and economic conflict occurs where the probability of large-scale conflict is negligible, mobilization against state policy is not automatically negative. Indeed, nonviolent social protest movements can be important forces for productive change. Social movements often push states to adopt policies that ultimately enhance both food security and sociopolitical stability by offering some redress for longstanding structural grievances that might otherwise lead to violence, even war.

This leads directly to the second fundamental point: the greatest dangers come not from lower-level instability associated with protests, riots, and work stoppages, but rather from violence at scale, especially in the form of organized civil or interstate war. Preserving peace is far more important, in human, economic, and geostrategic terms, than is maintaining stability. Indeed, a certain level of nonviolent instability can help to secure a stable peace if it compels the state to take actions that preempt the intensification and spread of deeper structural grievances—actions it would not choose without pressure. Riots are dangerous to local populations primarily insofar as they enable an opposition to build larger, more durable coalitions for violent political struggle against a regime. State and private actions can defuse more threatening and dangerous guerilla movements, terrorism, and civil or interstate war. Underappreciation of the central place of preventive and responsive action in mediating the relationship between food security and sociopolitical stability is perhaps the greatest deficiency of recent debates, which tend to treat the sociopolitical risks of food insecurity as driven largely by exogenous forcing variables such as climate or global market prices.

### 1NC — AT: 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 — AT: ABR

#### 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

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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, 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 — Presumption

#### Says that presumptions SHAPE prohibitions, not that they ARE prohibitions — that means at best they are EFFECTS T — KU is yellow

**2AC Gavil** and Salop **20** (Andrew I, Professor of Law, Howard University School of Law, and Steven C, Professor of Economics and Law, Georgetown University Law Center, University of Pennsylvania Law Review, “PROBABILITY, PRESUMPTIONS AND EVIDENTIARY BURDENS IN ANTITRUST ANALYSIS: REVITALIZING THE RULE OF REASON FOR EXCLUSIONARY CONDUCT”, Vol. 168, No. 2107) DB \*Footnotes in brackets

Since its emergence in Standard Oil,25 the rule of reason has been rooted in probability, not certainty.26 The Supreme Court explained that conduct could be deemed “unreasonably restrictive of competitive conditions” if it “were of such a character as to give rise to the inference or presumption” that it was “restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy.”27 [27 Standard Oil, 221 U.S. at 58 (emphasis added). The Court also noted that the use of “presumption[s]” in interpreting and applying the Sherman Act was rooted in the common law, on which its core prohibitions were modeled. Id. at 27, 58.] Seven years later, the Court again emphasized the probabilistic nature of judgments under the rule of reason in Board of Trade of Chicago.28 In Justice Brandeis’s statement of the rule of reason, he explained that the court “must ordinarily consider . . . the nature of the restraint and its effect, actual or probable.”29

From these two pillars, the modern rule of reason with its focus on competitive effects later developed in National Society of Professional Engineers30 and National Collegiate Athletic Ass’n.31 Writing for the Court in both cases, Justice Stevens drew heavily on Standard Oil and Chicago Board of Trade, synthesizing the key elements of presumption, inference, and probability. He explained that unreasonableness could be based on either “the nature or character of the contracts, or . . . on surrounding circumstances giving rise to the inference or presumption that they were intended to restrain trade and enhance prices.”32 Probabilistic assessments of likely competitive harm also are the basis of the “per se rule,” an application of the rule of reason that irrebuttably presumes conduct will restrain competition unreasonably.33

## CP — Conditions

**Prohibit means to forbid a given practice---that’s distinct from restriction.**

**Kennard 93** – Judge, California Supreme Court

Joyce L. Kennard, dissenting opinion in THEODORE R. HOWARD et al., Plaintiffs and Appellants, v. GEORGE H. BABCOCK et al., Defendants and Respondents. No. S027061., Supreme Court of California, 1993, https://law.justia.com/cases/california/supreme-court/4th/6/409.html

As I pointed out earlier, the majority's conclusion is at odds with the great weight of authority. Also, in determining reasonableness based on the relationship between or among attorneys, the majority gives little regard to the relationship between the attorney and the client. Moreover, the majority fails to recognize that restrictive covenants are intended to and do restrict the practice of law. Rule 1-500 proscribes agreements that "restrict" the practice of law, not just those that prohibit "altogether" the practice of law. (Contra, Haight, Brown & Bonesteel v. Superior Court (1991) 234 Cal.App.3d 963, 969 [285 Cal.Rptr. 845] [rule 1-500 "simply provides that an attorney may not enter into an agreement to refrain altogether from the practice of law"].) To "restrict" means to restrain, to confine within bounds. (Webster's New Collegiate Dict. (9th ed. 1988) p. 1006.) To "**prohibit**" means to **prevent**, to [\*\*164] [\*\*\*94] **forbid**. (Id. at p. 940.) **The terms are not synonymous**.

#### Prohibition means practices are never allowed—restrictions carve out exceptions

South African Revenue Service, 2021 (“Prohibited, restricted and counterfeit goods,” <https://www.sars.gov.za/customs-and-excise/prohibited-restricted-and-counterfeit-goods/>, last updated: 25 August 2021)

The main difference between prohibitions and restrictions is that:

prohibited goods are never allowed to enter or exit South Africa under any circumstances

restricted goods are allowed to enter or exit South Africa only in certain circumstances or under certain conditions, for example on production of a permit, certificate or letter of authority from the relevant government department, institution or body.

SARS administers certain prohibitions or restrictions in terms of section 113(8)(a) of the Customs and Excise Act, 1964 on behalf of a number of government departments, institutions or bodies, for example the Department of Agriculture, Forestry and Fisheries, National Regulator for Compulsory Specifications (NRCS), the South African Reserve Bank (SARB), to name a few.

#### a — Resolved

**OED 89** (Oxford English Dictionary, “Resolved,” Volume 13, p. 725)

Of the mind, etc.: **Freed from doubt or uncertainty**, fixed, settled. Obs.

#### b — Should requires immediacy and certainty

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16 [CONTINUES – TO FOOTNOTE] 13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or immediately effective, as opposed to something that *will* or *would* become effective in the future *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### c — Substantial

**Words and Phrases 64** (40 W&P 759) (this edition of W&P is out of print; the page number no longer matches up to the current edition and I was unable to find the card in the new edition. However, this card is also available on google books, Judicial and statutory definitions of words and phrases, Volume 8, p. 7329)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; **real at present time**, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive. Bass v. Pease, 79 Ill. App. 308, 318.

#### A new Department of Food would avoid the agency capture problems of the USDA and effectively regulate — this also answers theory

Rosenberg & Dutkiewicz 21, Associate Professor of Gender, Sexuality, and Feminist Studies and History at Duke University, (Gabriel, with Jan a visiting fellow in the Animal Law and Policy Program at Harvard University, 12/27/21, Abolish the Department of Agriculture)

The USDA, at this point, is so thoroughly captured by big agribusiness that it barely matters which party picks the secretary; whoever serves will ultimately serve mega-corporations and rich farmers. That’s partly because our political system over-represents rural voters and monied interests. But it’s also the product of more banal dysfunctions: poor institutional design, inertia, and mission-drift at an agency built for a different country and a different time. The USDA was designed for a United States in which a majority of people made their livelihoods, directly or indirectly, from agriculture. That country is long gone. It is replaced by one where very few people—and very few, very large corporations—control food production and distribution to the detriment of American consumers, taxpayers, and workers. If we are to have any hope of fixing what ails the American food system, we need a drastic approach: We need to abolish the USDA. In its place, we need an institution that will prioritize the public interest, including the interests of laborers and eaters, as well as public health and the environment. We need a Department of Food. To understand why the USDA is so ill-suited for the present moment, you have to understand its current structure. With a budget of $146 billion and about 100,000 employees, the USDA is a mammoth agency. It runs three different forms of direct assistance to farmers: commodity support programs, crop insurance, and “conservation” funding, which pays farmers to keep fields fallow or to implement emissions-mitigation programs on their farms. Off the farm, the USDA administers forests through the Forest Service, food safety regulation and oversight through the Food Safety and Inspection Service, rural development initiatives like high-speed broadband through the Rural Utilities Service, agribusiness research and development both directly and through grants, and the promotion and sale of U.S. agricultural commodities in foreign markets. It also administers the Supplemental Nutrition Assistance Program (formerly the Food Stamp Program, now known as “SNAP”) and other nutrition programs, which together make up just under 80 percent of the agency’s budget. All of this is funded through the sprawling Farm Bills that substantively define U.S. agricultural policy and the USDA’s operations every five years. There are two big problems here. On the one hand, the USDA is charged with the oxymoronic double mandate of both promoting and regulating all of American agriculture—two disparate tasks that, when combined, effectively put the fox in charge of the henhouse. On the other hand, the department remains focused on the needs of agricultural producers despite the broad social, environmental, and economic impacts of agriculture. In practice, this means that the USDA’s budget and policies must satisfy large farming interests, who demand and often get something in exchange for agreeing to the USDA’s other policies. These policies also show up in the administration and funding of SNAP, the nation’s biggest—if imperfect—policy solution to food insecurity. Through the Farm Bill, funding for SNAP has been fused to the USDA’s subsidy programs since its creation in the 1960s. As a result, the food security of the nation’s poorest households is continually held ransom to agricultural subsidies; any efforts by progressives to pare those subsidies will be met with cuts or roadblocks to food assistance by farm state politicians. And attempts to improve SNAP similarly run into partisan politics.Meanwhile, all those subsidies flow to farm households that hold a total net wealth nine times greater than the national median and, even among that already wealthy demographic, overwhelmingly to the very wealthiest farmers. Worse still, subsidies can increase the cost of food by incentivizing the production of nonfood commodities such as corn for ethanol and distorting agricultural markets. The marriage of SNAP and commodity support programs isn’t just bad; it’s perverse. There is no reason why food aid to the poorest Americans should be tied to support for the production of cash crops. SNAP is the most flagrant example, but it’s hardly alone. Because the USDA administers important parts of trade, energy, labor, and sometimes even military policy, these all appear in the Farm Bill. That means that farm-state politicians (who write the legislation) and big agricultural interests (whom they serve) use their outsized leverage to shape important policies otherwise unrelated to agriculture. This results in the sorts of massive subsidies and bailouts that prop up mass-scale commodity production. In 2019, for instance, when the Trump administration sought to compensate corn farmers for losses caused by its trade disputes, it overpaid $3 billion in aid to corn farmers, including offering farmers in different regions different prices for corn, with premiums going to those in the South and Midwest. The USDA also regularly provides price supports and bailouts for industries like dairy, with one study suggesting that dairy farms receive upwards of 75 percent of their revenue from different government supports. This horsetrading ultimately distorts and undermines any laudable project progressive forces might try to run through the department. For example, subsidies for corn ethanol ensure the crop is a reliable moneymaker for Midwestern farmers, but its contribution to a sustainable energy policy, its stated raison d’etre, is at best neutral. The throughline of all this dysfunction is simply that the USDA puts the interests of agricultural production for its own sake over everything else. As a result, the countless systemic problems of modern American agriculture go unaddressed. Agricultural workers are among the worst-paid in the United States, their wages completely incommensurate with the difficult and dangerous work they perform. A conservative estimate is that agriculture makes up 10 percent of all U.S. greenhouse gas emissions. It is also one of the biggest polluters of waterways in the U.S. Small, alternative, and minority-owned farming gets scant support. Meanwhile, over 100 million Americans are obese or suffer from diet-related diseases like diabetes and hypertension, in part as a result of agricultural policies and in part due to the failure of public health policies. Under the USDA’s watch, American farming has become the consummate exception to countless regulatory reforms of the past century. The law forbids you from treating animals in a cruel fashion. . . unless you’re a farmer. The law forbids you from dumping debris into open waterways. . . unless you’re a farmer. The law forbids you from firing an employee for joining a union. . . unless you’re a farmer. And the law also forbids you from employing a child under the age of 14. . . unless you’re a farmer. This last exception was so outrageous that Obama’s Department of Labor attempted to close the loophole in 2012 by extending the protection of existing child labor laws to agriculture. The changes were met with criticism from predictable corners such as major agribusiness interests and farm state politicians, including Democrats Jon Tester and Al Franken. Joining the critics was none other than Tom Vilsack. The changes were scrapped. Upwards of 500,000 children still labor in American agriculture. The USDA was established under Abraham Lincoln in 1862 as part of a suite of policies pushed by the small Northern farmers who made up the base of Lincoln’s Republican Party. In addition to the Homestead Act and the transcontinental railroad, these policies subsidized and accelerated the conversion of Western grasslands into settled agriculture and gave federal backing to the Jeffersonian ideal of small, independent, yeoman farmers—all, of course, on the plundered lands of Indigenous peoples, and doing little for the recently emancipated enslaved people who were excluded from many of the benefits. This basic logic of serving landowners and producers hasn’t changed substantially even as the country and its agriculture have. In the 1860s, Lincoln had good reason to call the USDA “The People’s Department” since 50 percent of the population lived or worked on farms, and in a country of 31 million there were 1.5 million farms. By the 1930s, this idea still held as the population grew to almost 130 million with 6.8 million farms. Today, however, in a country of 330 million, there are only around 2 million farms, and of those the 5 percent largest operations make up almost 60 percent of all production. Farm workers and operators, meanwhile, make up about only 1.7 percent of the U.S. labor force, even as agricultural output is higher than ever. Agriculture is now a high-volume and highly capitalized industry where a tiny fraction of farms produce the vast bulk of commodities. USDA policies are a big reason why. By trying, as MIT Professor Deborah Fitzgerald puts it, to turn “every farm into a factory,” the USDA pushed mechanical implements, artificial fertilizers, pesticides, and debt-financed, capital- and input-intensive agriculture. Given these incentives, most farmers, whether to grow rich or merely survive, have turned to business models predicated on high-yield monocropping, economies of scale, and farm consolidation. That means fewer, substantially larger farms produce just a handful of commodities or factory-farmed animals. Today, corn, soy, and wheat make up half of all crop sales, and upward of 99 percent of meat, including over 9 billion chickens, comes from factory farms where animals are fattened up on those crops. This isn’t a pattern either major political party knows how to break: It’s built into the department’s structure and backed by a powerful lobbying apparatus. Farmers and agribusiness furnish the USDA with political capital and the USDA guarantees stable prices for commodity monocrops with minimal regulation. “Conventional farmers,” writes the agricultural critic Daniel Imhoff, “stay afloat by farming the system rather than growing what might best serve their particular tract of land for the long term or provide for more well-rounded, healthy diets.” The system serves up the safe bet, but it has also selected, generation after generation, for farmers (and policymakers) who only make safe bets. While the USDA’s rotten policies work far better for large farmers than small ones, the primary victims are not people who own farms, but the 99 percent of the population who do not. Now more than ever, workers and consumers desperately need a safe, equitable, and sustainable food system, and to build one we need an agency up to the task. A Department of Food would start with a mandate to maintain a just, healthy, and sustainable food system. Agricultural policy would be only one element, alongside food and nutritional access and industrial, energy, labor, land use, environmental, climate, and animal-welfare policies. It would leave the economic promotion of agriculture to the Department of Commerce and the production of energy to the Department of Energy, shedding its conflicts of interests and focusing its institutional energies exclusively on making sure that all Americans have access to safe, healthy, fairly produced, and affordable food. These goals would be its benchmarks of success—not the economic profitability of American agriculture as it is defined by rich farmers and agribusinesses executives. With a clearer mission, the Department of Food would be leaner and more focused, armed with renewed energy and a broader public interest. It could stop subsidizing the production of corn ethanol. It could, instead, shape agricultural subsidies to incentivize the production of healthy foods that have low greenhouse gas and environmental footprints. It could start taxing the production of foods that do not. The Department of Food could end agriculture’s regulatory exceptionalism by forcing farms to adhere to the same basic environmental, animal welfare, and labor standards that other businesses must already obey. It could ensure that all workers, on farms and in food services, are fairly paid, work under safe conditions, have robust labor rights, and have healthy and affordable food to eat. It could also leave all food-safety policymaking and oversight to the Food and Drug Administration, again eliminating a conflict of interest. (Currently, the USDA receives pressure from special interests, like meatpackers, whose products it promotes. As a result, the department winds up rubber-stamping misleading claims about the humane treatment of animals, for example.) The Department of Food could support major improvements in animal welfare laws, making the sort of treatment that is standard on factory farms illegal and industrialized animal agriculture functionally impossible, and with it the wasteful monocrop corn and soy animal feed supply chain.

#### Yes impact and Walt is just wrong — this card directly indicts their study

**Schanzer & Dubowitz 20** – (Jonathan Schanzer is the senior vice president for research at the Foundation for Defense of Democracies; Mark Dubowitz is the chief executive officer of the Foundation for Defense of Democracies; “The Dangerous Illusion of Restraining U.S. Power”; Foreign Policy; D.A. September 4th 2020, [Published August 18th 2020]; <https://foreignpolicy.com/2020/08/18/us-global-power-retain-vs-restrain/>) //LFS—JCM

The call for the United States to show “restraint” by withdrawing from foreign entanglements and keeping the focus at home is growing in foreign-policy circles—and not just in the Trump administration. The current movement appears to have started in 2014, when Massachusetts Institute of Technology professor Barry Posen published the seminal work on foreign-policy restraint. His work, not surprisingly, resonated with realists-cum-isolationists such as John Mearsheimer and Stephen Walt, not to mention a gaggle of libertarians who found a new bottle for their old laissez-faire wine. There is even a restrainers’ [think tank](https://quincyinst.org/), the Quincy Institute for Responsible Statecraft, erroneously named for former President John Quincy Adams owing to a fundamental misreading of his thinking and a failed attempt to [apply](https://www.militarytimes.com/opinion/commentary/2019/10/08/trump-syria-withdrawal-decision-immoral-and-short-sighted/) cavalry-era strategizing to 21st-century superpower affairs.

Isolationist ideas clearly appeal to Trump. But they have also taken hold on the left. Sen. Bernie Sanders’s wing of the Democratic Party ensured that a call for the end of “forever wars” found its way into the Democrats’ [platform](https://www.demconvention.com/wp-content/uploads/2020/07/2020-07-21-DRAFT-Democratic-Party-Platform.pdf). At this week’s virtual convention, Democrats will surely blame Trump for undermining U.S. influence—but it’s unclear how many Democrats actually support a return to greater U.S. commitments around the world. Presumptive candidate Joe Biden’s long record in the U.S. Senate as a foreign-policy internationalist—as well as his choice of Sen. Kamala Harris from the party’s moderate wing as his running mate—offers hope for greater U.S. engagement with traditional allies. Yet it remains uncertain whether a Biden administration would push back decisively against the country’s most determined adversaries. And as vice president, Biden had a seat at the table when then President [Barack Obama](https://www.voanews.com/archive/obama-focus-nation-building-home) adopted his own elements of isolationism, including his withdrawal of troops from Iraq, his unwillingness to enforce his own “red line” against the Syrian regime’s use of chemical weapons, and his tepid response to Russia’s invasion and annexation of Crimea.

The common theme among restrainers: The United States has no business intervening in other nations’ affairs. Or, as [H.R. McMaster](https://www.foreignaffairs.com/articles/united-states/2020-06-01/retrenchment-syndrome), a 34-year veteran of the U.S. Army and former national security advisor to Trump, has noted, isolationists hold the “romantic view that restraint abroad is almost always an unmitigated good.”

In some ways, the restraint movement echoes the isolationism championed in the 1930s and 1940s by Charles Lindbergh’s America First Committee. Like that earlier isolationism, the restraint movement attempts to draw lessons and inferences from U.S. wars. In the 1930s, isolationists invoked World War I, in which almost 120,000 Americans perished, as a reason to avoid challenging German and Japanese fascism. The thought was that if Americans just stayed out of World War II, the totalitarians would leave them alone.

Today’s restrainers similarly seek to [capitalize](https://www.foreignaffairs.com/articles/2019-04-16/end-hubris) on the suffering and difficulties associated with the wars in Iraq and Afghanistan, as well as the broader fight against terrorism, when they [argue](https://www.foreignaffairs.com/articles/afghanistan/2020-02-10/price-primacy) for the withdrawal of the remaining forces in these conflicts and others. Restrainers, however, often conflate the decision to intervene at all with how a conflict is subsequently managed or how eventually to withdraw. These are different policy decisions. Indeed, one can be critical of the 2003 invasion of Iraq and how the war was managed—while also believing that Washington should retain a modest U.S. military presence there to help prevent a return of the Islamic State or to counter the influence of Iran.

Restrainers have also attempted to [use](https://foreignpolicy.com/2012/01/03/how-to-save-the-global-economy-cut-defense-spending/) the Great Recession and the current economic [crisis](https://quincyinst.org/2020/07/22/covid-19-and-the-costs-of-military-primacy/) resulting from the COVID-19 [pandemic](https://www.washingtonpost.com/powerpost/citing-pandemic-house-liberals-demand-cut-in-military-spending/2020/05/19/ee49c8c2-9961-11ea-a282-386f56d579e6_story.html) as leverage to incite [populist](https://foreignpolicy.com/2018/09/24/socialists-and-libertarians-need-an-alliance-against-the-establishment/) passions. They do this by falsely [suggesting](https://breakingdefense.com/2020/05/dont-let-the-covid-deficit-hurt-defense-spending/) that defense spending is the primary source of the federal deficit and debt. They also suggest a false choice between domestic priorities and spending on defense, which amounts to less than 4 percent of U.S. gross domestic product.

Restrainers consistently [paint](https://www.realcleardefense.com/articles/2020/04/30/trump_can_either_leave_the_middle_east_or_have_war_with_iran_115236.html) existing and potential conflicts and U.S. military deployments with the same brush, warning of another “forever war.” However, not every conflict leads to an interminable quagmire. Even the so-called war on terror, despite its headaches, so far has helped prevent another major foreign terrorist attack on the United States, which many had predicted to be inevitable after 9/11.

The term “forever war” is itself curious. History, unfortunately, is a forever war—the chronicle of states’ struggles with their enemies. To be sure, one can write a truly wondrous history of human achievement. But sadly, as the Spanish writer George Santayana observed, “only the dead have seen the end of war.”

It is for this reason that former President Ronald Reagan advocated “peace through strength.” This view served the United States and its NATO allies well in Europe during the Cold War. Reagan, of course, was only borrowing from the Roman adage: “If you want peace, prepare for war.” The Chinese strategist Sun Tzu and his Prussian counterpart Carl von Clausewitz offered similar advice. Their common belief: Weakness and lack of resolution invite aggression.

Restrainers [operate](https://foreignpolicy.com/2020/04/21/theres-no-such-thing-as-good-liberal-hegemony/) under the mistaken [assertion](https://www.foreignaffairs.com/articles/afghanistan/2020-02-10/price-primacy) that the world would be a safer or better place if U.S. influence would simply [recede](https://www.foreignaffairs.com/articles/united-states/2013-01-01/pull-back). The 20th century tells another story. As the historian Robert Kagan argued in his 2012 [book](https://www.amazon.com/World-America-Made-Robert-Kagan/dp/0345802713) The World America Made, the U.S.-led world order has heralded a global rise in liberalism and human rights, better education and health, greater wealth, and more access to information.

## Advantage

#### 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.

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## Presumption

## DA — FTC Tradeoff

#### FTC has sufficient resources now to fight fraud. But they are stretched to capacity.

Soto et al. 21, American attorney and Democratic politician from Kissimmee, Florida, who is the U.S. Representative for Florida's 9th district; Lina Khan is Chair at the FTC; Noah Joshua Phillips is Commissioner at the FTC; Rohit Chopra is Commissioner at the FTC; Christine S. Wilson is Commissioner at the FTC, (Darren, “Transforming the FTC: Legislation to Modernize Consumer Protection,” Committee on Energy and Commerce, 6/28/21, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer>)

Noah Joshua Phillips (5:06:17): Thank you, Congressman, I'd just start with the fact that when I began, our budget was about 309 million, I think, something like that, and the latest congressional budget justification has us at 389. So there's been a substantial increase in the ask, including some funding from Congress. So I think it's important to track how those resources are used. But I do think we can do more with more. That's, that's certainly a true thing. But I think it's important to take care in how we spend what we have.

Darren Soto (5:06:46): Thank you. Commissioner Chopra.

Rohit Chopra (5:06:48): Sir, I think - I know every agency says that they need more resources. But just looking at the data, we are stretched completely to capacity and the rubber band is snapping. And if we need to effectively enforce the law, we need the resources. There are so many laws that Congress has recently passed, whether it's relates to opioids or so many other topics, that the FTC has not brought a single law enforcement action on. That's not just resources. That's also Commissioner accountability. But resources will certainly help.

Darren Soto (5:07:25): Commissioner Slaughter.

Christine Williams (5:07:30): Commissioner Slaughter had to leave, but Commissioner Wilson is here. And I would say that our hard working staff have been even harder working during the last 18 months. They are teleworking but they are working incredibly hard to stay on top of the increase in mergers as well as the increase in COVID scams. And I agree with Commissioner Phillips, it's important to understand how we are spending additional appropriations. But I also know that there are many different areas of the economy where Congress has expressed interest in our being very active and aggressive. And it is difficult to do that unless we have the appropriate resources to do that.

#### The FTC is tentatively committed to fighting fraud now. But it’s under the radar.

Kaufman 12-21-2021, JD (Daniel, “What Is a Rule-A-Palooza – Another Public Federal Trade Commission Meeting,” JD Supra, <https://www.jdsupra.com/legalnews/what-is-a-rule-a-palooza-another-public-1946261/>)

Commissioner Slaughter discussed scammers who impersonated her when she was acting chair in an effort to steal COVID-19 relief funds from consumers. Commissioner Phillips noted that he has been concerned that the agency was turning away from fraud enforcement and also noted the recent decline in complaints being issued from the agency. And Commissioner Wilson made it clear that although this rule is worthy of being initiated, the broad “rule-a-palooza” described in the Statement of Regulatory Priorities is hugely problematic. And she asked folks to check out her dissent, linked above. Chair Khan noted that government and business impersonation schemes have “skyrocketed during the pandemic” and were targeting seniors, communities of color and small businesses. And I would be remiss if I didn’t have at least a few words to say about the public comment portion of the show, and of course the continued rigorous oversight of time limits by the FTC’s awesome head of public affairs. (And I know that sounds absolutely sarcastic, but I swear it isn’t intended as such – she is the best.) A smaller-than-usual number of participants addressed issues including impersonation fraud and the FTC’s recently launched supply chain study. And for my closing thoughts, I will reiterate Commissioner Phillips’ point. I too have been concerned that, up until now, the new FTC leadership has been pretty quiet about the agency’s fraud work, causing many to wonder whether the agency would decrease its traditional fraud focus. It remains to be seen, but I certainly hope agency leadership realizes how important it is for the agency to continue to be a leader in tackling fraud. But let’s set expectations about this rulemaking: despite the controversial streamlining of FTC rulemaking, there is a long, long road ahead for this rulemaking. And if you are interested in the rulemaking, you can find background information and questions that will help frame the issues here. And trust me – your comments in rulemakings are reviewed closely by FTC staff.

#### The evidence also is about Vilsack — Vilsack proves the power of the ag lobby. He flipped from ag-hippie to Big Ag shill once lobbying pressure set in.

Kaufman 8-17-2021, Author of THE FALL OF WISCONSIN (Dan, “Is It Time to Break Up Big Ag?,” New Yorker, <https://www.newyorker.com/news/dispatch/is-it-time-to-break-up-big-ag>)

Perhaps the most pivotal figure in any effort to break up Big Ag will be Tom Vilsack, Biden’s Secretary of Agriculture, and the only Cabinet member from the Obama Administration to return to office under Biden. Vilsack had been a rural adviser for Obama’s 2008 campaign, which offered a decidedly populist message to farmers. “The game’s been rigged,” Obama had said, during a visit to a farm in Adel, Iowa. “It’s time we had a government that understood it’s the Department of Agriculture, not the Department of Agribusiness.” After winning the Democratic nomination, Obama released a plan for rural America that included rigorous enforcement of antitrust laws like Packers and Stockyards. Obama won forty-five per cent of the national rural vote, carrying Iowa by ten points and Wisconsin by fourteen. When Obama picked him to lead the Department of Agriculture, Vilsack was widely considered a pro-business choice, a former governor who had supported tax breaks for the ethanol industry. But his political ascent was preceded by a difficult childhood. Born to an unwed Irish American mother, in Pittsburgh, he was placed in a Catholic orphanage, and adopted as a four-month-old; by the time he left for college, his adoptive mother, who struggled with alcohol and prescription drugs, had made two suicide attempts. After graduating from law school, in Albany, New York, he moved to Mount Pleasant, Iowa, his wife’s home town, and joined his father-in-law’s firm. The job put him in contact with farmers who, during the Reagan Administration, were facing their biggest crisis since the Depression. “I represented a lot of farmers who were losing their farms,” Vilsack told me. “That directed my interest to try to provide some help.” In December of 1986, a disgruntled homeowner, angry about backed-up water in his basement from the town’s sewer system, rose at a Mount Pleasant city-council meeting, pulled out a handgun, and shot and killed the mayor, Edd King. King’s father asked Vilsack to run in the ensuing special election. Vilsack won the mayor’s race—and, later, a state senate seat, and then two terms as Iowa’s governor. As a member of Obama’s cabinet, Vilsack publicly embraced organic agriculture, established a program to bring locally grown foods to school cafeterias, and launched the U.S.D.A.’s StrikeForce Initiative, which invested more than twenty-three billion dollars in infrastructure, conservation, nutrition, and other programs in rural counties with persistently high poverty rates. But he also proved to be a mostly reliable steward of the corporate-friendly status quo. He approved so many genetically modified crops that critics began calling him Mr. Monsanto. At the 2009 United Nations Climate Change Conference, in Copenhagen, he unveiled a plan for the U.S.D.A. to help farmers cut greenhouse-gas emissions by buying manure digesters, even though they are useful only for large, carbon-intensive factory farms. Vilsack also faced pressure to revive antitrust enforcement. Two years before he took office, a U.S.D.A. inspector general’s report revealed that the Grain Inspection, Packers, and Stockyards Administration, or gipsa, the agency within the U.S.D.A. tasked with enforcing fair business practices, was actively blocking the enforcement of its own rules. Most notably, gipsa’s acting administrator had stashed about fifty of the agency’s enforcement actions in a desk drawer, instead of prosecuting them. In response, Vilsack proposed a set of sweeping measures that would, among other things, make it easier for farmers to sue processors for harming their business. “I think it’s fair to say what we’re proposing is aggressive,” Vilsack said, in a news conference announcing the new rules. “Our job is to make sure the playing field is level for producers.” In 2010, Vilsack hosted a nationwide series of hearings to investigate anticompetitive practices and market concentration in various agricultural sectors. “The President has instructed the Department of Agriculture to establish a framework for a new rural economy,” he said at the first hearing, in Iowa, which was attended by Attorney General Eric Holder and Christine Varney, the head of the Justice Department’s antitrust division. At a hearing in Madison, Wisconsin, which focussed on the dairy industry, hundreds of farmers were in attendance, some from as far as California and New Mexico. Vilsack highlighted the problems that agricultural consolidation was causing for rural America. He noted that rural counties in the U.S. accounted for ninety per cent of those with persistent poverty—meaning, twenty per cent or more of the population has lived in poverty for the past thirty years—and that nearly half the country’s dairy farms had been lost in the previous decade. “When we lose farming operations, it not only impacts that specific family but it also has a significant impact on rural America,” he said. “I have a growing concern about the condition of rural America.” Meanwhile, the meat industry began an intensive lobbying campaign against Vilsack’s proposed gipsa rules, which the National Farmers Union had dubbed the “Farmer and Rancher Bill of Rights.” The House and Senate Agriculture Committees requested that Vilsack extend the deadline for comments, which he did, putting the new deadline beyond the 2010 midterm elections. That year, as the journalist Christopher Leonard details in “The Meat Racket,” the country’s five largest meat companies and their front groups spent nearly ten million dollars on lobbying, casting the gipsa rules as job-killing regulatory overreach. After the midterms, when Republicans regained control of Congress, they attached an annual rider to the U.S.D.A. appropriations bill stripping the agency of funds to complete the rule-adoption process. Vilsack did not fight back. In 2016, he told the Des Moines Register, “I don’t think just because a couple of the major players are going to potentially merge or consider some other kind of arrangement that that necessarily long-term absolutely guarantees that farmers are going to have less choice.” A few weeks after leaving office, Vilsack was hired as president of a dairy-export group, earning roughly a million dollars a year. His successor in the Trump Administration, Sonny Perdue, effectively eliminated gipsa. “When Vilsack failed to follow through, it really set the effort back,” Leonard told me. “It was worse than if they had done nothing. It emboldened the companies not only to continue their practices but to intensify them.”

#### It’s all interconnected

Macy & Lee 17, \*Creighton J., Attorney, Baker McKenzie. Formerly served as chief of staff and senior counsel in the Department of Justice Antitrust Division, working as a senior advisor to the acting assistant attorney general on civil and criminal antitrust enforcement and policy matters, as well as budget and personnel issues. \*\*Craig Y., Attorney, Baker McKenzie. Leads the Firm’s global cartel task force (12-14-2017, "When Merger Review Turns Criminal", *American Bar Association*, <https://www.americanbar.org/groups/business_law/publications/blt/2017/12/07_lee/>)

But that separation of criminal and civil enforcement sections at the Antitrust Division does not create walls or silos. The different criminal offices often work together on large investigations and trials. Similarly, the size of many civil investigations requires pulling resources from the various civil sections, as well as from the Antitrust Division’s Appellate, International, and Competition Policy and Advocacy sections. But the collaboration does not end there. Coordination between the civil and criminal sections is the norm. Section managers meet regularly to discuss matters and often consult on an informal basis. Cross‑pollination occurs at the trial attorney level as attorneys are detailed to other sections for specific matters or periods of time. And understanding this collaboration between the civil and criminal sections is vital to attorneys and their clients subject to the merger review process. A recent case not only shows how in sync the Antitrust Division’s criminal and civil sections are, but also highlights the implications of that collaboration.

In December 2014, two packaged seafood companies announced their proposed merger. As is customary to the review process, the parties submitted documents to one of the Antitrust Division’s civil sections. What followed was anything but routine. However, based on the level of collaboration within the Antitrust Division, it should not have been unexpected.

From document review to charges for price-fixing

The Antitrust Division’s civil attorneys reviewed the documents submitted by the parties and uncovered information that raised concerns of price‑fixing. When the parties walked away from the deal on December 3, 2015, then-Assistant Attorney General Bill Baer’s statement in the press release made a veiled reference to their problematic documents. He said, “Our investigation convinced us—and the parties knew or should have known from the get-go—that the market is not functioning competitively today, and further consolidation would only make things worse.”

The parties’ abandonment of the deal did not end the Antitrust Division’s investigation. Instead, the civil attorneys conducting the merger review shared their findings with their criminal counterparts. A criminal section proceeded to open a price‑fixing investigation based on the shared materials. That investigation has borne fruit and is ongoing. To date, three individuals and one company have been charged for participation in a price‑fixing conspiracy. Criminal antitrust violations, such as price-fixing, have serious implications. Not only are the criminal penalties substantial, but companies can be subject to civil suits with treble damages (15 U.S.C. § 15.).

For individuals, the maximum penalties are 10 years in prison and a $1 million fine. For corporations, the maximum fine is $100 million. Fines for both individuals and corporations can exceed the statutory maximum amount by up to twice the gain derived or twice the loss by victims. See, e.g., Price Fixing, Bid Rigging and Market Allocation: An Antitrust Primer, Department of Justice Antitrust Division, available at https://www.justice.gov/atr/priceifxing-bid-rigging-and-market-al location-schemes (discussing the Sherman Act).

While it is not public what specific information was contained in the documents that raised the attention of the reviewing attorneys, or exactly how the process happened, the Antitrust Division did state that the criminal investigation was triggered by “information and party materials produced in the ordinary course of business.” Until more information is revealed, several questions remain, including whether similar criminal investigations based on documents submitted for merger review could be waiting to surface.

The packaged seafood matter is not the first criminal case to stem from a civil investigation and likely will not be the last. The hand‑in‑hand coordination between the civil and criminal sections of the Antitrust Division will continue. Companies need to be increasingly aware of the risks that ordinary course documents present, not just in impacting merger approval but also in criminal implications. Merger review does not exist in a vacuum. Once documents fall into the Antitrust Division’s (or FTC’s) hands, parties can expect that they will be closely reviewed with an eye toward both civil and criminal actions. Documents always tell a story—and attorneys need to be sure that the story told is one to support a proposed deal and not a criminal investigation.

Similarly, the FTC and Antitrust Division share a close working relationship. We will continue to explore and monitor the collaboration between those two agencies as well as with state attorneys general. We also plan to address the collaboration among competition agencies around the world. Stay tuned.

#### \*\*\*Here are some choice lines from 1AC ev—inserting bc aff already read them-- KU

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/content/qt0m16g2r5/qt0m16g2r5.pdfAH>

II. Prong One: “Antitrust Injury” Should Include the Threat of Loss of Profits due to Possible Price Competition The negative effects of agriculture consolidation have transpired largely due to the lack of antitrust enforcement from the Courts and the DOJ and FTC. The Supreme Court’s ruling on Cargill v. Monfort, which allowed two meatpacking corporations to merge even though the plaintiff, a competing firm, claimed the merge would cause a “threat of loss of profits.” This showcases how this perspective on antitrust laws has failed to err on the side of precaution and subsequently allows mergers that decrease competition in the marketplace to arise. This section outlines the intended purpose of antitrust laws, provides an overview of the case, then argues why showing the threat of loss of profits due to possible price competition following a merger does constitute antitrust injury. Further, this ruling has created an unreasonable threshold for private entities to bring potential mergers to court and has created precedent for later filings to be dismissed on the basis that they did not prove sufficient “antitrust injury.” A. Origins of Antitrust Law The term “antitrust” came about in the late 1800s because many companies were transferring their stock to a board of “trustees” who controlled the output and prices for entire industries.47 With this in mind, antitrust laws were designed to ensure that a few corporations do not hold substantial economic power that could “be exerted to oppress individuals and injure the public generally.”48 Not only do they intend to prevent monopolization of markets, but they aim to maintain competitive markets, increase consumer surplus, increase the quantity and quality of the product consumed, reduce deadweight loss, and improve efficiency in resource allocation as well.49 Congress created three major Federal antitrust laws to maintain competition in the marketplace: The Sherman Antitrust Act, the Clayton Antitrust Act and the Federal Trade Commission Act.50 The first of the antitrust laws, The Sherman Antitrust Act was enacted in 1890 with the purpose of protecting interstate and foreign trade by outlawing contracts, combinations, conspiracies, and anticompetitive conduct that unreasonably restrained trade.51 The Act is not violated when one firm’s vigorous competition and lower prices take sales from its less efficient competitors; in this case, the Courts state that competition is working properly.52 While the Sherman Act imposes a more onerous burden of proving actual unreasonable restraints, Congress created the Clayton Act to require proof only of potential anticompetitive effect.53 The Act intends to prevent practices that suppress competition and give large businesses undue advantages over small businesses, as well as to prohibit mergers and acquisitions that are likely to lessen competition.54 There are three key elements that help uphold United States antitrust laws and affect the level of enforcement. The first is jurisprudential doctrines that the courts develop.55 Judicial decisions may limit or expand the reach of antitrust laws by setting precedents that alter the government’s ability to challenge certain types of cases. The second is the prosecutorial discretion that enforcers, the DOJ, the FTC, and the state attorneys general, employ.56 Because these agencies determine what does and does not violate antitrust laws, a change in the enforcement discretion or philosophy of enforcers may affect the intensity of regulation. The third is the fiscal resources provided to the enforcers.57 Judicial rules that increase or decrease the cost and barrier to entry to pursue cases can affect the number of antitrust cases brought to trial. B. Jurisprudential Doctrines are Largely Influenced by Lenient Interpretations by the Courts Until the late 1970s, the courts strictly ruled against many mergers and in favor of protecting competition. However, this changed when Robert Bork published a book in the 1980s arguing that the government must only focus on changes in consumer prices when assessing anticompetitive harm, a perspective known as the “consumer welfare standard.”58 His framework prioritized economic efficiency over small businesses, arguing that big business should be allowed to consolidate because its efficiency benefited the economy.59 Concurring with Bork, the Chicago School principles claim that underenforcement of antitrust laws was better than overenforcement because market self-correction will provide sufficient safeguards to competition.60 Because of these new priorities, the Supreme Court, FTC, and DOJ adopted this philosophy in 1979 ushering in what is known as the Chicago Era.61 They prioritized the efficiencies and lower prices that larger firms created, thus rolling back their antitrust enforcement on larger firms to create more consolidated industries.62 Although consolidated industries may positively affect consumers by decreasing prices, the Court neglected to take into account the negative effect that consolidation in agricultural purchasing and distribution had on suppliers such as farmers. When there are less buyers, distributors, or packers who compete for the supplier’s good, the buyers are able to control and drive down the price they pay to the suppliers; they create what is known as monopsony power. C. Cargill v. Monfort Cargill v. Montfort exemplifies a decision invoking a diluted enforcement of the Clayton Act that leads to the creation of monopsony power. In this case, the Supreme Court overruled the Circuit and District Court rulings and decided that the plaintiff, Monfort, did not establish sufficient antitrust injury under Section 16 of the Clayton Act by claiming a threat of loss of profits to sue Excel. Monfort, the fifth largest beef packing corporation in the United States, was contesting the merging of Excel and Spencer, the second and third largest beef packing corporations in the United States. Excel is a wholly owned subsidiary of Cargill, Inc., which owns more than 150 subsidiaries in over 35 countries.63 The merger would still leave Excel as the second largest packer, but its market share would almost equal the largest packer, IBP, Inc.64 The case was first brought to the Tenth Circuit Court, where they agreed that the plaintiff proved antitrust standing and was able to seek injunction under Section 16 of the Clayton Act, which allows for a party to sue for injunctive relief due to “threatened loss or damage by a violation of the antitrust laws.”65 This conclusion was reached because Montfort’s viability in the market would be injured by (1) a threat of loss of profits from the possibility that Excel would lower its prices to a level at or only slightly above its costs, and (2) a threat of being driven out of business by the possibility that Excel would lower its prices to a level below its costs, which would violate Section 7 of the Clayton Act.66 Section 7 intends to prohibit actions that substantially lessen competition or tend to create monopolies.67 These injuries would be met on the premise that Excel would injure Monfort by enacting a “price-cost squeeze.” A price-cost squeeze would involve Excel increasing the bidding price it would pay for cattle while lowering the price it sells the end product, boxed beef, to a level at or only slightly above its production costs.68 In effect, this would require Monfort to also lower its prices in order to remain competitive, causing them to suffer profit losses.69 Excel’s large financial resources endowed by its owner, Cargill, would allow it to accept far lower profit margins than firms like Monfort, which would eliminate competitors in the short run and reduce competition in the long run.7071 This inevitability violates the Clayton Act by creating a “threatened loss or damage”72 by a pricecost squeeze, which would “substantially… lessen competition”73 and create a dynamic in which Excel can control the market to maximize their own benefit.74 The District Court agreed that Monfort’s allegations and proof of anticompetitive effect were sufficient given that Excel, being the second largest producer, could create an acquisition that realistically threatens Monfort’s position as a strong competitor in the marketplace.75 The Court of Appeals also affirmed this ruling and held that the respondent’s allegation of a “pricecost squeeze” was not just harm from competition, but constituted a claim of injury as a form of predatory pricing because Excel would drive other companies out of the market.76 D. The Supreme Court’s Ruling on Cargill v. Monfort Undermines the Clayton Act In response to the District and Circuit Court rulings, the Supreme Court’s first argument was that the showing of loss or damage merely due to increased competition does not constitute antitrust injury to seek relief under Section 16.77 The Supreme Court looked back to its rulings on Brunswick orp. V. Pueblo Bowl-O-Mat, Inc., where they held that “antitrust laws do not require the courts to protect small businesses from the loss of profits due to continued competition, but only against the loss of profits from practices forbidden by the antitrust laws.”78 Here, the Court found that the competition that Monfort alleged, competition for increased market share, was simply vigorous competition, and not actively forbidden by antitrust laws.79 The Court suggests that if antitrust laws protected competitors from the loss of profits due to this price competition, any decision by a firm to cut prices in order to increase market share would be rendered illegal.80 However, showing loss or damage due to increased competition does constitute antitrust injury. Antitrust injury results from predatory pricing, an anticompetitive practice forbidden by antitrust laws where a corporation intentionally lowers prices below normal competitive prices in order to monopolize part of the market.81 Monfort demonstrated that this injury is at play because they proved high likelihood that Excel would engage in a price-cost squeeze. A price cost squeeze may be viewed as “simply vigorous competition” in the short run. However, if the practice continues, it will greatly reduce competition in the long run. Furthermore, antitrust laws focus on protecting competition in the long run rather than treating these matters as mere short term price wars. In this case, the Court focused on the post-merger conduct and opted to deny relief unless the plaintiff could prove a violation of the Sherman Act. Instead, the Court should focus its attention on the merger itself and grant relief if there is a significant probability that the merger will adversely affect competition in the market, focusing on the probable threat of harm rather than actual harm.82 This aligns with the purpose of Section 7 in the Clayton Act to prevent mergers that “may substantially lessen competition, or tend to create a monopoly” without requiring initial proof of ongoing, established harm to the plaintiff.83 Section 16 of the Clayton Act is not being properly enforced to protect competition if it does not grant plaintiffs antitrust injury on the basis that there is a threat of loss of profits due to possible price competition following a merger. The Supreme Court’s second argument is that the respondent neither raised nor proved any claim of predatory pricing before the District Court. This is because Monfort did not allege that Excel’s engaging in a price-cost squeeze was included in predatory activities.84 Although Monfort may only have four passing references that claim that Excel would be able to and would probably engage in predatory pricing, it should not need to claim this, rather, the evidence of a price-cost squeeze likely occurring is enough to satisfy antitrust injury. 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. III. Prong Two: The DOJ and FTC have significantly decreased the number of agriculture and meatpacking merger acquisitions that they block A. Power in the Hands of the Antitrust Division and Federal Trade Commission to determine Harmful Merges The second institutional aspect affecting antitrust enforcement is observed in federal agencies. The DOJ and FTC are the federal agencies that evaluate if corporate merges valued at more than $94 million can occur.8889 Since the 1980s, regulation by the FTC and DOJ has significantly decreased. Every year the FTC and DOJ review over a thousand merger filings, and it was found that between 2000 and 2005, 95 percent of merger filings presented no competitive issues.90 For mergers that “may… substantially… lessen competition, or tend to create a monopoly,”91 the FTC conducts more in-depth investigations using their Merger Best Practices guidelines.92 Oftentimes, competitive issues with these mergers are solved by consent agreement with the parties. In the few cases where the agency and parties cannot agree on a way to fix the competitive problems, the agency may bring the merger on administrative trial to federal court.93 These agencies base their determination on if a merge is likely to create or increase market power.94 Market power is the ability of a seller or a group of sellers to profitably maintain prices above competitive levels for a significant period of time or the ability of a buyer or coordinating group of buyers to depress prices below competitive levels.95 When a merger is brought before them, such as the acquisition of Cargill by Continental, the Division conducts extensive research. In this case, they worked with over 20 attorneys, economists and paralegals who reviewed over 400 documents and consulted with officials from the USDA, FTC and state attorneys general offices. They interviewed over 100 farmers, farm organization officials, agricultural economists, grain company executives, and other individuals. In conducting their analysis, the Division determines the size and shape of the product and geographic markets, how recent buying and selling patterns would be affected by the merge, analyzes the size of the firms’ market shares, and looks at the pre- and post-merger levels of concentration in the market.9697 From this, the Division decides if the effect of the merger may substantially lessen competition in the relevant market, which determines whether or not to allow the merger to exist.98 In Philadelphia National Bank, the Supreme Court set forth an additional test that said if mergers control an undue percentage share of the relevant market and which results in a significant increase in the concentration of firms in the market inherently likely to lessen competition, then they violate Section 7 of the Clayton Act.99 After the Division follows these steps, they can prevent the merger from existing or allow the merger to proceed if they follow restructuring recommendations. For Cargill, they concluded that the merger would prevent competition and options for farmers to sell their products to. Thus, the Division suggested multiple divestitures in Cargill and Continental facilities throughout the Midwest, West and Texas Gulf. The Division did this because they wanted to ensure that farmers in the affected markets would have alternative buyers to sell their grain and soybeans to.100 This case exemplifies that the DOJ and FTC have the capacity to determine how much evidence is needed to prove injury, what constitutes control of an “undue percentage share of the relevant market,” and what “a significant increase in the concentration of firms in the market” is.101 Although the investigation in Cargill and Continental resulted in an adequate enforcement of antitrust guidelines, the majority of cases do not face comparable evaluation. B. Regulation by the DOJ has Significantly Decreased Decreased regulation by the DOJ and FTC is not adequately protecting competition. From 2010 to 2019, despite a 79.16 percent increase in the number of pre-merger submissions to the DOJ and FTC, from 1,166 to 2,089, the percentage of mergers that these agencies conducted a second request for decreased by 0.5 percent and 0.3 percent respectively for the DOJ and FTC.102 Despite a clear increase in the number of merger requests, the DOJ and FTC have not proportionally increased the usage of their enforcement mechanisms. Examining enforcement in 2013, there were 1,326 merger transactions reported, 217 of which raised questions for further inquiry based solely on information reported. From this, 47 second requests were issued from the FTC and DOJ to collect data from the businesses. After receiving this information, the DOJ and FTC brought 38 merger enforcement actions which in the majority included settlement agreements with the parties involving asset divestiture to prevent post merger harm. This resulted in only 6 merger cases filed in court seeking injunction rather than settlement.103 Seeing as enforcement trends have shifted to such a great extent to allow over 95 percent of merger transactions form every year, the DOJ and FTC have clearly demonstrated a propensity to decrease regulation of mergers, which generally favors furthering the dominance of large corporations. The Cargill case epitomizes the Court’s lenient attitude specifically against enforcement of Section 7 of the Clayton Act where the federal agencies also need to increase enforcement to uphold the goals of the statute. Under Section 7 in the Clayton Act, the number of merger cases investigated by the DOJ have decreased in each decade following the Bork era: 125.3 merger cases per year in the pre-Bork era from 1970 to 1979,104 95.1 cases per year in the post-Bork era from 1980 to 1989,105 and most recently, only 69.8 cases per year from 2010 to 2019.106 Merger cases have experienced drastic decreases in the number of cases for which the DOJ conducts a second request, finds violation of antitrust laws, and bars a merger from proceeding from the 1970s to our current age. For agriculture enforcement specifically, since 1969 the DOJ has only filed 10 cases against company mergers for fluid milk manufacturing and dairy products, while meat packing firms have only faced 7 cases cumulatively.107 The DOJ’s decreasing regulation of mergers that substantially harms competition has caused the agriculture market to become more consolidated; therefore, it must reinvigorate its deference to its statutory duties to uphold the Clayton Act and strike down on mergers that it foresees will and currently are, threatening competition on the marketplace. From 2008 to 2011, the FTC challenged nearly all mergers that would result in three or fewer significant competitors, most that would result in four or fewer significant competitors, and none that would leave five or more competitors.108 This practice closely resembles Robert Bork’s philosophy arguing that mergers resulting in four or more competitors should be presumptively lawful.109 Although the FTC was diligent in challenging mergers that would result in three or fewer significant competitors, having five large competitors on the market still constitutes a substantially consolidated market, further decreasing competition and preventing smaller businesses from surviving and profiting. 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. In order to address prong two, where the DOJ and FTC have largely allowed consolidation in the marketplace to transpire with limited regulation, the DOJ and FTC must increase the number of agriculture and meatpacking merger acquisitions that they block by holistically analyzing the scope of the merger’s market power. Additionally, they must reinvestigate current corporations in the market that have unruly market power, such as Tyson, and require divestiture. Tyson is sued on average 2.7 times every month, however, it still holds a substantially large percentage of the meat processing and packing industry.111 By implementing both of these recommendations, the federal government can truly fulfill their regulatory responsibilities by laying the groundwork for increasing competition by maintaining or increasing the number of farms, distributors and meatpacking businesses. CONCLUSION 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.

#### The FTC would take the lead on enforcing Section 7 of Clayton. They’ve internally stated they would.

Schwartz 21 (The Five Developments You Should Follow if You Want to Know What Antitrust Enforcers Are Doing in the Fields of Agriculture, <https://constantinecannon.com/2021/10/11/the-five-developments-you-should-follow-if-you-want-to-know-what-antitrust-enforcers-are-doing-in-the-fields-of-agriculture/>

3) The FTC Has Agriculture on the Brain Too Recently, under the leadership of its new Chair, Lina Khan, the FTC announced that it was also going to “crack down on marketers who make false, unqualified claims that their products are Made in the USA.” Khan joined Commissioner Rohit Chopra in issuing a statement that with the rule, the FTC “has activated a broader range of remedies, including the ability to seek redress, damages, penalties, and other relief from those who lie about a Made in USA label. The rule will especially benefit small businesses that rely on the Made in USA label, but lack the resources to defend themselves from imitators.” The FTC’s “Made in USA” labeling rule will prohibit marketers from using that designation unless “1) final assembly or processing of the product occurs in the United States; 2) all significant processing that goes into the product occurs in the United States; and 3) all or virtually all ingredients or components of the product are made and sourced in the United States.” There was much interest in the rule from farmers, ranchers and others in the agricultural industry who were generally in favor of the stricter standards. Several farm and agricultural trade unions supported Khan’s confirmation as FTC Commissioner by endorsing her as a “champion for farmers, ranchers, and workers,” who has advocated for full enforcement of the Packers and Stockyards act to curb “abusive” business practices by “monopolistic” corporations in the seed, agrochemical, meatpacking and retail markets. She has long been a supporter of farmers and agricultural workers, writing in 2012 about the damage monopolization has caused to rural America. In her article, Khan criticized the administration at the time for its handling of concentration in the industry after it engaged in multiple agricultural hearings in 2010 to expose problematic issues: The other factor the administration blames is the weakened state of America’s antitrust laws. In the past, antitrust law was used to promote competition and to protect citizens from concentrated economic power. But today, enforcers say they are handicapped even when confronting markets that are no longer competitive. “However desirable, today’s antitrust laws do not permit courts or enforcers to engineer an optimal market structure,” the DOJ wrote in its recent report on the 2010 agriculture hearings. Far-reaching actions—like the Wilson administration’s challenge of the meatpacking industry ninety years ago—are, they say, simply unimaginable under today’s narrow antitrust framework. Varney, who has since left the DOJ for private practice, says that the Justice Department pushed the law as much as it could under her tenure. “If you overreach in the courts you will lose, and the very behaviors you are calling illegal will be validated by the court,” she said. “This is not about a fear of taking risks or a fear of losing. It’s a fear of setting the producers back.” One wonders, though, whether the administration’s actions—taken as a whole—did not set the farmers back as much as would a loss in court. By documenting the big processing companies’ exploitation of independent farmers, then failing to stop that exploitation and retreating in almost complete silence before entirely predictable resistance from the industry, the administration, for all intents, ended up implicitly condoning these injustices. The message to the processing companies is, after all, absolutely clear: you are free to continue to act as you will. As FTC Chair, Khan will no doubt try to make absolutely clear to processing companies: the status quo cannot remain. 4) Crackdowns on Price-Fixing and Coordination Among Big Players The U.S. Department of Justice (“DOJ”) has been investigating alleged “price-fixing, bid rigging and other anticompetitive conduct in the broiler chicken industry.” Koch foods was recently indicted for participating in a conspiracy to fix prices for broiler chicken products. Pilgrim’s Pride, another chicken producer, has already pleaded guilty and was sentenced in February to pay a $107 million criminal fine for its role in the conspiracy, which began in 2012 and lasted at least until 2019. Last month, a federal court permitted a class-action lawsuit against JBS, Tyson, National Beef and Cargill to proceed on a claim that the meat packers conspired to suppress the price of cattle and increase the price of beef. In re Cattle Antitrust Litigation, filed in 2019 in the U.S. District Court for the District of Minnesota, accuses the four meatpackers of forcing the cost of cattle down and increasing the price of beef through tactics such as “coordinated procurement” and “reduced slaughter capacity,” which allegedly involved defendants agreeing to close and underutilize plants. Winn-Dixie Stores and Bi-Lo Holding filed a lawsuit in the District of Minnesota against the same four meatpackers with similar allegations in August 2021. The DOJ also launched an investigation regarding these meatpackers in 2020 but has yet to release its findings. More such investigations and lawsuits may be on the horizon. 5) More Merger Review on the Horizon Merger review and challenges are also on the mind of legislators and regulators. The FTC Chair’s Memo to Commission Staff and Commissioners Regarding the Vision and Priorities of the agency outlined as a first policy priority addressing “rampant consolidation and the dominance that it has enabled across markets.” That consolidation is on full display in the agricultural sector where numerous mergers over the years have contributed to concentration, including Dow and DuPont, ChemChina and Syngenta, and Bayer and Monsanto. Other notable mergers have demonstrated the continued consolidation in the meat and poultry industries. Tyson Foods acquired Hillshire Brands in 2014 and Keystone Foods in 2018. Hormel acquired Applegate Farms in 2015. National Beef acquired Iowa Premium in 2019. Recently, U.S. Senator Chuck Grassley urged the DOJ to examine the latest big agriculture deal, a proposed $4.53 billion deal for commodities trader Cargill and agricultural investor Continental Grain to buy Sanderson Farms, the third largest chicken producer in the United States. The FTC and the DOJ have authority to challenge mergers under Section 7 of the Clayton Act, which states, in relevant part, that “[n]o person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock . . . where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.” 15 U.S.C. § 18 (emphasis added). Section 7 applies prospectively to potential mergers that may lessen competition but can also apply to transactions that are already consummated. Private parties, such as competitors, customers, or suppliers of merging parties, can also challenge mergers under this provision and may also obtain divestitures if they can show injury.

#### If they do win the plan is exclusively private, that’s a New link. Increasing private litigation causes Congress to gut agency budgets

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Still, with antitrust budgets quite limited and politically dependent in many newer antitrust enforcement jurisdictions, it would not be surprising to see a rise in private antitrust enforcement correspond with a decrease in public funding. Politicians eager to cut budgets may see little need for generosity to public agencies as to a public good supplied amply supplied by private markets. At any rate, as private enforcement grows throughout the world, it will be important to understand how, if at all, this affects legislatures’ willingness to fund competition authorities.