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## OFF

### OFF

T-Executive

#### 'Expanding the scope’ requires Congressional action.

King 19 – Attorney, BurnsBarton PLC

Kathryn Hackett King, Defendants State of Arizona, Davidson, and Shannon’s Reply in Support of Motion to Dismiss Complaint, Toomey v. State of Arizona, et al., US District Court for the District of Arizona, January 2019, LexisNexis

In Title VII, Congress made clear it was unlawful for an employer to discriminate “because of sex.” Plaintiff claims the State Defendants discriminated against him because of his transgender status, but as explained in the Motion (with supporting case law), (i) courts cannot expand Title VII without congressional action, and (ii) Congress has repeatedly had the opportunity to enact legislation to add gender identity to Title VII, but has not done so. (Doc. 24, p.9-10). Plaintiff cannot refute that when Title VII does not protect a particular category, legislative action is required to change that.5 Plaintiff argues Congress’s failure to enact new legislation to add gender identity is not relevant because later acts of Congress are not probative of prior legislative intent. But the point is that expanding the scope of a federal statute requires congressional, not judicial, action. Gunnison v. Comm. of Int. Rev., 461 F.2d 496, 499 (7th Cir. 1972) (“Further expansion of the favored treatment specifically provided in §402(a)(2) as an exercise of legislative grace is a function for the Congress, not for the Courts”). Yet here, Congress has failed to act to expand Title VII. Congress’s failure to act demonstrates Title VII does not include unenumerated categories. Bibby v. Phil. Coca Cola, 260 F.3d 257, 265 (3d Cir. 2011) (“Harassment on the basis of sexual orientation has no place in our society….Congress has not yet seen fit, however, to provide protection against such harassment”).

#### Limits and ground---non-Congress affs dodge generics and zero link UQ because judicial expansion of antitrust happens constantly.

### OFF

T-Per Se

**Only per se illegality is a prohibition.**

**Seita and Tamura 94** (Alex Y. Seita, Professor of Law, Albany Law School of Union University. B.S. 1973, California Institute of Technology; J.D. 1976, M.B.A. 1980, Stanford University, & Jiro Tamura, Associate Professor of Law, Keio University. B.A. 1981, M.A. 1983, Keio University; LL.M. 1985, Harvard University, [“The Historical Background of Japan's Antimonopoly Law,” 1994 U. Ill. L. Rev. 115, 177-178](https://advance.lexis.com/api/document/collection/analytical-materials/id/3S3T-WD60-00CW-508X-00000-00?page=177&reporter=8130&cite=1994%20U.%20Ill.%20L.%20Rev.%20115&context=1516831))

Upon the elimination of the restriction on undue substantial disparities in bargaining power, for example, economic concentration of power in and of itself was no longer a problem for business. The elimination of the prohibition against certain concerted activities meant that cartel behavior was no longer illegal per se. Most significantly, the authorization of depression and rationalization cartels under the Antimonopoly Law, with JFTC permission, legalized cartels under certain conditions. 418 Thus the rule of reason, rather than per se illegality, now governed cartel behavior. 419

#### The rule of reason is not a prohibition.

Skoczny 01 – Professor of law, Holder of the Jean Monnet Chair on European Economic Law at the Warsaw University Faculty of Management

Tadeusz Skoczny, “Polish Competition Law in the 1990s - on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules,” European Business Organization Law Review, Vol. 2, Issue 3-4, September 2001, LexisNexis

Most importantly, the new Act departed from the relativity of the prohibition of dominant position abuses; as in Article 82 EC Treaty, it is now a general prohibition which does not allow for exemptions on the basis of a rule of reason. Also new is the prohibition of the abuse of dominant position by groups of undertakings, which will allow to effectively control the state and the development of competition on oligopolistic markets. The Act also eliminated the distinction between monopolistic and dominant position; in theory and in practice, it was difficult to justify the maintenance of this distinction. Therefore, the Act relates only to a dominant position, the definition of which however has been changed. According to the new Article 4 point 9, dominant position means a position "which allows [the undertaking] to prevent effective competition on the relevant market thus enabling [the undertaking] to act to a significant degree independently from its competitors, contracting parties and consumers". It is easy to notice that this definition is based on the United Brands and Hoffmann La-Roche standards. It must nevertheless be emphasised that such understanding of dominance was introduced by the AMC already in 1993; it considered dominance as the capacity to act "to a large extent independently of the competitors and clients, thus also the consumers". Thanks to the AMC's judgements also the relevant product and geographical markets are defined on the basis of the criteria of "close commodity substitutability" and "homogenous competition conditions".

#### Vote neg---limits and ground---rule of reason exemptions zero topic DAs and explode the topic to any law review. Per se is the only shot at unique links.

### OFF

T-Subsets

#### “The” refers to the entire group as a whole

Kentucky Supreme Court 3 (Opinion in Kotila v. Com., 114 SW 3d 226 - Ky: Supreme Court 2003. Google scholar caselaw, date accessed 9/26/21)

Whether a conviction under this statute requires possession of all (as opposed to any) of the chemicals or equipment necessary to manufacture methamphetamine under some manufacturing process is a matter of statutory construction. First, we examine the language of the statute, itself. United States v. Health Possibilities, P.S.C., 207 F.3d 335, 338-39 (6th Cir.2000) ("The starting point in a statutory interpretation case is the language of the statute itself."). Obviously, the multiple manufacturing methods and the availability of a broad range of readily available chemicals and equipment necessary for each manufacturing process militates against itemizing within the statute all of the possible chemical and equipment combinations by which methamphetamine could be manufactured. Nevertheless, KRS 218A.1432(1)(b) does not read "[p]ossesses chemicals or equipment," or "[p]ossesses some of the chemicals or equipment," or "[p]ossesses any of the chemicals or equipment." It reads "[p]ossesses the chemicals or equipment for the manufacture of methamphetamine." The presence of the article "the" is significant because, grammatically speaking, possession of some but not all of the chemicals or equipment does not satisfy the statutory language. "The" is "[u]sed as a function word before a plural noun denoting a group to indicate reference to the group as a whole." Webster's Third New International Dictionary 2369 (1993).

In decisions spanning three different centuries, the appellate courts of this Commonwealth have found use of the word "the" to have a significant effect upon meaning. See Revenue Cabinet v. Hubbard, Ky., 37 S.W.3d 717, 719-20 (2000) ("[U]se of the definite article `the' indicates that the statute refers to the entire body and not to discrete parts or components ...."); Cardwell v. Haycraft, Ky., 268 S.W.2d 916, 918 (1954) (the trial court's contributory negligence instruction was erroneous in that it contained the definite article "the" before the words "proximate cause" and "such language indicates that `the sole' rather than `a contributing' cause was meant."); Schardein v. Harrison, 230 Ky. 1, 18 S.W.2d 316, 319 (1929) ("[I]f the makers of the Constitution had intended to qualify the word `office' [in Ky. Const. § 161] they would have inserted the definite article `the' before `office.'") (quotation omitted); Sheriff of Fayette v. Buckner, 11 Ky. (1 Litt.) 126, 128 (1822) (holding that legislative act referencing "the clerk of the court" intended a particular clerk of court referenced elsewhere in the legislation). For similar interpretations by other jurisdictions, see, e.g., State Farm Fire & Cas. Co. v. Old Republic Ins. Co., 466 Mich. 142, 644 N.W.2d 715, 718 (2002); Patricca v. Zoning Bd. of Adjustment, 527 Pa. 267, 590 A.2d 744, 751 (1991); McClanahan v. Woodward Constr. Co., 77 Wyo. 362, 316 P.2d 337, 341-42 (1957); Williams v. McComb, 38 N.C. (3 Ired. Eq.) 450 (1844) ("[G]rammatically speaking, `The,' is a definite article before nouns, which are specific or understood, and is used to limit or determine their extent."). We are directed by the General Assembly to construe our statutes "according to the common and approved usage of language." KRS 446.080(4). Following that directive, we construe "the chemicals or equipment" to mean all of the chemicals or all of the equipment necessary to manufacture methamphetamine.

#### The ‘private sector’ means all non-government entities.

Senate Report 95 (Senate Report. 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1> , date accessed 9/10/21)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### Violation---the aff doesn’t prohibit a practice done by all non-government entities.

#### Vote neg---limits and ground---subsets aren’t controversial and explode the topic.

### OFF

Agencies DA

#### Antitrust law enforcement has two areas of focus now: health care and big tech. Health care is under the radar.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### US ag exports prevent hotspot escalation

Castellaw 17

Lieutenant General John Castellaw is the Founder and CEO of Farmspace Systems LLC, a provider of precision agricultural aerial services and equipment. He is a highly decorated 36-year veteran of the United States Marine Corp where he participated in and led several humanitarian operations in Africa, Asia and Europe. He is also the former President of the non-profit Crockett Policy Institute where he created the “SOLDIER 2 CIVILIAN” program to help veterans find jobs in precession agriculture. He graduated from the University of Tennessee, Martin (UTM) with a degree in Agriculture. He currently operates his family farm in Tennessee. “Opinion: Food Security Strategy Is Essential to Our National Security.” Agri-Pulse. May 1st, 2017. https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy. An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability. The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from American farmers and ranchers. Emerging markets currently purchase 20 percent of U.S. agriculture exports and that figure is expected to grow as populations boom. Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs. This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people. Too often these situations deteriorate into shooting wars requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population. Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being. Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

### OFF

Tech Leadership DA

#### Tech leadership is secure, BUT antitrust cedes it.

Abbott 21, JD, MA, Senior Research Fellow at the Mercatus Center focusing on antitrust, formerly served as the Federal Trade Commission’s General Counsel. (Alden, *et al*, 3-10-2021, “Aligning Intellectual Property, Antitrust, and National Security Policy”, *Regulatory Transparency Project of the Federalist Society*, pg. 2-5, <https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-SecurityPolicy.pdf>)

II. The United States Plays a Critical Role in 5G Standards Development The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9 Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13 The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead. III. Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15 Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21 Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23 Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world. The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27 This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

#### Digital platform integration is more innovative and avoids hold up dynamics

Todd 19, MA, LLM, LPC, Trainee Solicitor, Herbert Smith Freehills LLP, London (Patrick F., "Digital Platforms and the Leverage Problem," *Nebraska Law Review* 98, No. 2, pg. 515-516, <https://heinonline.org/HOL/P?h=hein.journals/nebklr98&i=498>)

1. Efficiencies from Adjacent Market Entry

On one hand, there are efficiencies that flow from adjacent market entry by digital platform owners. Firstly, a platform owner (take an operating system) that charges a profit-maximizing price would prefer if downstream firms producing complementary products (take app developers) charged at cost (i.e., had no market power), so that output was not restricted even further by the imposition on consumers of markups at two levels of distribution. 14 2 When the platform owner integrates into the adjacent market, it can internalize the markup in the platform or adjacent market (as they are complements), exercising market power solely in one market. In these circumstances, "both consumers and firms are worse off with successive monopolies than when there is a single, integrated monopoly." 14 3 Traditionally, the efficiencies generated manifest themselves in the form of lower prices, but double-marginalization can also lead to better quality (for example, more intrusive levels of advertising).

Secondly, integrated firms are not subject to the opportunistic "hold up" behavior that can occur in the price system. 14 4 Say a platform owner wants to embed mapping functionality in its platform software and contracts with a firm that specializes in such functionality. If the platform owner makes specific capital investments in tailoring its platform code to integrate with the third party's mapping software, the latter can then (threaten to) hold-up the platform owner and force it to increase the price it pays to license the mapping functionality, a cost that the platform owner will pass onto consumers. Integration into mapping functionality both solves this problem and serves as a threat to other suppliers that would otherwise engage in this sort of opportunistic post-contractual behavior.

Lastly, there may also be economies of scope or distribution that render a platform owner the most efficient producer of the adjacent product. The platform owner may invest in and develop certain pieces of software that can form the basis of multiple adjacent applications, lowering the cost of developing the latter.14 5 Non-duplication of functionality can also improve performance.146 Comparably, a platform owner's knowledge of software development, gained through the development of its core platform, can render it the most cost-effective producer of complementary components. If the platform owner can produce both the platform itself and a component for the platform at a lower cost than would prevail if a third party produced the component, consumers will benefit from lower prices and better quality.

#### They read the impact for us.

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#### The United States federal government should increase regulatory prohibitions that adopt the principle of separating platforms from commerce for platforms in the private sector.

#### Solves, competes, and avoids the court and agency DAs.

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)

A. Antitrust and Regulation as Policy Alternatives A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incen- tives and discipline necessary to keep prices low, output high, and innovation moving forward.8 But sometimes market forces alone cannot ensure efficiency and economic welfare—for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, in- novation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which “antitrust may help maintain com- petition.”9 Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through “skill, foresight and industry.”10 Thus, competition authorities like the FTC and the DOJ’s Antitrust Division review mergers, inves- tigate single-firm conduct, and prosecute collusion.11 Private plaintiffs can pur- sue civil antitrust liability through suits in the federal courts.12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm’s activity is “substantially to lessen competition, or to tend to create a monopoly,”13 or to constitute a “contract, combination, . . . or conspir- acy” in restraint of trade,14 or to “monopolize, or attempt to monopolize” any line of business.15 Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure—and Congress has often done so. With such statutory authority, “[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles.”16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers.17 The 1992 Cable Act gave the FCC authority to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry’s market structure.18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecom- munications industry. More recently, the FCC issued,19 and then repealed, 20 “network neutrality” regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition.21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries.22 In contrast to the case-by-case approach of antitrust, regulation typically im- poses ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone com- panies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to custom- ers of competing networks.23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency’s enforcement decision is usually on the regulated party. Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures.24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act.25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has “willful[ly]” acquired or maintained other than “as a consequence of a su- perior product, business acumen, or historic accident.”26 Alternatively, with au- thority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies,27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots.28

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#### The 50 United States and relevant subnational entities should adopt the principle of separating platforms from commerce for platforms in the private sector.

#### Solves and avoids all DAs.

Lange et al. 21, \*Perry A., JD, antitrust lawyer, vice-chair of the ABA Antitrust Section’s Joint Conduct Committee. \*Brian K. Mahanna, JD, former chief of staff and deputy attorney general in the Office of the New York State Attorney General, \*Nicole Callan, JD, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, \*Álvaro Mateo Alonso, LLM, Law Degree, antitrust lawyer. (3-5-2021, "Developments in Antitrust Law: Keep an Eye on New York", *WilmerHale*, Full report accessible at: https://www.wilmerhale.com/en/insights/client-alerts/20210305-developments-in-antitrust-law-keep-an-eye-on-new-york)

Although much attention recently has been focused upon debates in Congress, potential legislative changes to U.S. antitrust law are not limited to proposals at the federal level. Many states are considering changes to their own antitrust laws, which usually can be enforced by state attorneys general and private plaintiffs. Importantly, New York legislators have introduced two bills that propose sweeping changes to the State’s antitrust law, the Donnelly Act, building on measures introduced in New York’s last legislative session.

These proposals, if enacted, would make New York’s single firm conduct statutory provisions the most aggressive in the United States and would give the New York Attorney General a more prominent role in reviewing transactions—including by creating a first-of-its-kind state merger notification requirement. These changes would allow New York’s antitrust law to reach a range of conduct not actionable under any existing federal or state antitrust law, and would introduce European-style antitrust standards to New York. Accordingly, this reform would create considerable new compliance challenges and risk for companies potentially subject to New York antitrust law, whether or not those companies are located in New York.

Other U.S. states and territories are considering antitrust law changes, but the New York proposals are the most significant. Although much of the conversation concerning developments in antitrust law has focused on “Big Tech” companies, these proposals would affect businesses across all sectors of the economy. This alert discusses these legislative proposals and key implications for businesses.

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#### Both bills pass soon---PC key.

Patteson 10-19-2021 (Callie, “Jayapal vows infrastructure, reconciliation bills will pass following talks,” *New York Post*, <https://nypost.com/2021/10/19/jayapal-vows-passage-of-infrastructure-reconciliation-bills/>)

Leader of the House Progressive Caucus Pramila Jayapal vowed this week that both the bipartisan infrastructure package and the massive, hotly debated reconciliation bill, otherwise known as the “human infrastructure” package, will pass in Congress — but stopped short of providing a timeline. During MSNBC’s “The Rachel Maddow Show” on Monday, Jayapal (D-Wash.) revealed it was “great to spend time” with Sen. Joe Manchin (D-WV) to discuss the bill, after the two — and several others — have gone back and forth over the price tag of the reconciliation package for weeks. The ongoing negotiations have delayed the passage of the infrastructure bill, causing frustration on both sides of the aisle. However, Jayapal, who has been leading the charge for the progressives, promised both pieces of legislation will pass. “We’re going to get them both done. We are going to get them done. It is a messy process. Democracy is not always easy. Negotiation is not always easy,” she said. “There are differences. Everybody knows there are differences. We have to bridge them, and we got to come together because, at the end of the day, we have to deliver both these bills, the infrastructure bill and Build Back Better Act, to the president’s desk.” “I have always been happy to talk to anybody. It was great to spend time with Senator Manchin today. I’m not going to get into the details of what we talked about. I think it is important for us to be talking to each other,” she added. Rep. Pramila Jayapal. Rep. Pramila Jayapal added that it is “important for us to be talking to each other” regarding infrastructure negotiations. CNN Jayapal’s comments came hours after Manchin and Sen. Bernie Sanders (I-Vt.) stood shoulder to shoulder and smiling outside the Capitol. “We’re talking,” Manchin said, a statement Sanders repeated. When asked if they would reach agreement on the final form of the bill by this weekend, Sanders again stated: “We’re talking.” Moments earlier, Sanders told reporters: “I think there is a general feeling that negotiations have been going on for month after month after month, and that it is time that we had — we brought this thing to a head as soon as we possibly can. And I would hope that we’re gonna see some real action in the next — within the next week or so.” Progressives, backed by House Speaker Nancy Pelosi (D-Calif.) and President Biden, have long pushed for the reconciliation package to cost $3.5 trillion, a number they have suggested is already a compromise. Moderates like Manchin and Sen. Kyrsten Sinema (D-Ariz.) have vowed to vote against a number that high, putting Democrats in a bind, as they need all 50 Senate votes to pass the budget without any Republican support through a parliamentary procedure called reconciliation. Progressive in turn have used the infrastructure package as leverage to pass the massive spending bill first. Biden made clear earlier this month that the infrastructure bill will not move without the larger measure. While Manchin has revealed he would support a top number of $1.5 trillion, Sinema has not publicly stated what her budget would be. She has, however, reportedly said she would not support the multitrillion-dollar social spending bill until the bipartisan infrastructure measure passes in Congress. “We’re going to keep having these conversations,” Jayapal added Monday. “I’m back at the White House tomorrow with some of my progressive colleagues. I know the president is also doing another meeting with some of the other centrist Democrats, but this is important. I do think it’s important that the president himself has been really engaged.”

#### Antitrust reform trades off

Carstensen 21, JD and MA @ Yale, Former Chair of U-W Law School, Senior Fellow of the American Antitrust Institute (Peter, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>)

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### FTC rulemaking requires Congressional grant of authority---otherwise, the aff is struck down. That’s overwhelmingly controversial because of fear of FTC overreach.

Sean Heather 21, Senior Vice President for International Regulatory Affairs & Antitrust, Chamber of Commerce, 2021, “Why the FTC is Powerless When it Comes to Competition Rulemaking,” https://www.uschamber.com/technology/why-the-ftc-powerless-when-it-comes-competition-rulemaking

As designed, the FTC’s core statute gives the agency a dual purpose: it is tasked with enforcement against unfair methods of competition (antitrust) and unfair and deceptive practices (consumer protection) when such conduct arises in the marketplace. However, Congress intentionally avoided articulating precisely what qualifies as a violation under either prong of the FTC’s authority.

Instead, Congress gave the FTC broad authority to investigate and, on a case-by-case basis, determine violations. This open-ended power allowed the FTC to shape the law by bringing various cases that established fact-patterns that the marketplace over time would need to take into consideration. Where the FTC sees conduct it believes to be a violation of the law, it brings the case, and the courts provide a check and balance, but only on appeal, to ensure the FTC does not overreach.

Outside this case-by-case approach, the FTC was never granted legislative style rulemaking to determine what is and what is not an unfair method of competition or an unfair and deceptive practice. The FTC, given its status as an administrative body, already serves as prosecutor, judge, and jury. Congress, instinctively, has understood the problem of extending rulemaking powers to the agency allowing the agency to write the rules it is empowered to enforce. Such a super concentration of power is ripe for abuse, as an agency empowered to write the rules it enforces severely limits the scope of judicial review.

Today, some have suggested the FTC should aggressively pursue unfair methods of competition rulemaking. The FTC is powerless to do so, as explained in the U.S. Chamber of Commerce’s white paper on “[Pushing the Limits? A primer on FTC competition rulemaking.](https://www.uschamber.com/assets/archived/images/ftc_rulemaking_white_paper_aug12.pdf)” The paper, authored by Maureen Ohlhausen, former Acting Chair of the Federal Trade Commission and James Rill, former Assistant Attorney General for Antitrust at the Department of Justice, finds:

The FTC has a troubling history of rulemaking overreach, one that the courts and Congress have both stepped in to limit.

Congress has never explicitly granted legislative style rulemaking authority to the FTC related to either prong of its core legislative mandate.

Congress has only provided the FTC explicit, but limited rulemaking authority for unfair and deceptive acts and practices through specific procedures commonly referred to as “Magnuson-Moss authority”.

Congress has made no grant for unfair methods of competition rulemaking, instead empowering FTC to exclusively undertake case-by-case administrative adjudication of competition cases to shape the law.

Efforts by the agency to engage in competition rulemaking ignore the clear limits of its statutory authority. The agency would be better served to be mindful of its history and make effective use of its ability to prosecute unfair methods of competition on a case-by-case basis.

#### Passage now is vital to success of international climate talks. That solves climate change.

Frazin 10-11-2021, analyst @ The Hill (Rachel, “Biden faces pressure to pass infrastructure bills before climate summit,” The Hill, <https://thehill.com/policy/energy-environment/575976-biden-faces-pressure-to-pass-infrastructure-bills-before-climate?rl=1>)

President Biden is facing pressure to get major infrastructure legislation across the finish line ahead of a global climate summit this month. Congress is currently working through both a bipartisan infrastructure bill that includes investments in an electric vehicle charging network and public transit and a Democrat-only “social infrastructure bill” that would spend heavily on clean energy. Summit participants are keeping a particularly close eye on the Democratic measure, which has much greater potential to deliver the kind of emissions cuts Biden has promised. Countries are expected to negotiate the future of climate action at the COP26 climate meeting in Glasgow, Scotland, where the U.S. will be working to restore its climate leadership after four years of inaction under the Trump administration. Passing the sweeping Democratic spending bill would give the U.S. more credibility and leverage in negotiations as it attempts to push other countries for more action. “It will definitely improve the hand that special envoy [John] Kerry can play at the COP negotiations in Glasgow if legislation has been passed — in fact either bill, but of course ideally both,” said Kelly Sims Gallagher, who worked on climate diplomacy in the Obama administration. “Although the Biden administration put in place a number of executive orders at the beginning of his presidency, those policies will only take the United States so far,” she said. “Legislation is really essential to be able to put the United States on track for achievement of the 2025 target and of course also the new target that President Biden announced in April for 2030.” Former President Obama committed the U.S. to reducing its emissions 26 to 28 percent by 2025 compared to 2005 levels. President Biden in April said he hoped the U.S. would cut its emissions to 50 to 52 percent of the 2005 level by 2030. As of 2019, U.S. emissions were down 12 percent from 2005 levels, and then dropped almost 10 percent in a single year during the COVID-19 pandemic. However, the International Energy Agency has warned of a spike in global emissions this year as economies look to rebound. Democrats are saying the infrastructure bills will help reach Biden’s more ambitious goals. In an August “Dear Colleague” letter, Senate Majority Leader Charles Schumer (D-N.Y.) said the legislation would bring the U.S. on track to cut its emissions by about 45 percent below 2005 levels by 2030 — and with other executive and state actions, that number would reach 50 percent. A version of the Democrats' bill put forward in the House has a number of climate provisions, including clean energy tax credits, a fee on methane emissions from the oil and gas industry, and a program that would seek to shift the bulk of the country’s electric power to renewable energy through payments and fines to power providers. But the size, scope and timeline of the bill — currently carrying a $3.5 trillion price tag — are being cast in doubt amid qualms from conservative Democrats. Sen. Joe Manchin (D-W.Va.) has not only raised issues with the size of the bill but also with some of its climate provisions, particularly the electricity program. Nevertheless, forces both inside and outside Congress have said they hope to have a deal across the finish line as the U.S. seeks to restore its climate credibility on the world stage in the coming weeks. “Glasgow is a matter of weeks away. We want the president to be able to go there with a plan to meet our emissions promises and standards,” House Speaker Nancy Pelosi (D-Calif.) said late last month. Climate hawk Sen. Ed Markey (D-Mass.) echoed those comments in a press conference with colleagues and climate activists outside the Capitol. “We must act in Congress before Joe Biden goes to meet with the rest of the world,” he said. Asked recently whether it was important for U.S. lawmakers to get the bill done before the conference, COP26 President Alok Sharma told reporters that “being able to show progress domestically is, of course ... going to be important in terms of them encouraging others to do the same.” Others argue that it’s particularly important to deliver tangential progress after the U.S. lost credibility on climate during the Trump administration — notably with his withdrawal from the Paris agreement, which was born out of a previous global climate conference. “The experience of seeing President Trump walk away from the Paris agreement has countries understandably nervous about the long-term reliability of the United States,” said Jennifer Haverkamp, a climate negotiator during the Obama administration. Haverkamp, now a professor at the University of Michigan, said that the U.S. not getting the legislation done in time could make it harder for other countries to justify their own climate actions. “The negotiators from other countries are pretty sophisticated and make themselves students of the U.S. legislative process,” she said. “But for them to have the political backing of their governments and the support of their public, it’s harder to explain if they don’t have something concrete to point to from the United States.” And Gallagher, who is now a professor at Tufts’s Fletcher School, noted that the U.S. passing its own legislation would allow American negotiators to push other countries to “hold themselves accountable to achieving the commitments that they’ve set for themselves.”

#### Warming leads to extinction---it’s a conflict-multiplier and defense doesn’t assume non-linearity

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

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose existential risks. This is because of intrinsic positive feedback loops, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield surprises. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of food and water, and shortages of food and water can create conflict and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to exacerbate drought and water scarcity, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases storm frequency and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, coastal communities will be exposed to unprecedented storm surge—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare extreme events because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have adapted to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks.

For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, the Earth’s climate system is rife with positive feedback loops. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could catch humanity off-guard and produce a true apocalyptic event. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that runaway climate change, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends even greater existential risks. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

### OFF

#### The aff bypasses APA procedure – fiat means subsequent litigation overturns court doctrine.

Gorod ’17 (Brianne; 10/20/17; chief counsel at the Constitutional Accountability Center, attorney-adviser in the Office of Legal Counsel and law clerk to Justice Stephen Breyer; Slate; “Same Rules Apply”; <http://www.slate.com/articles/news_and_politics/jurisprudence/2017/10/this_is_how_legal_challengers_will_block_trump_s_contraception_mandate_attack.html>; DT) \*edited for reading ease

Not even a full year into his term, President Donald Trump has already made clear in countless ways that he doesn’t think the normal rules apply to him. The administration applied that principle again earlier this month when it issued rules loosening the Affordable Care Act’s contraception mandate without going through a key necessary step. This part of the process—called notice-and-comment rule-making—tripped up the Obama administration on numerous occasions in federal court, and Trump may soon find his controversial effort to allow employers to refuse birth control coverage for religious or moral reasons in similarly hot water. Although the president and other executive branch officials have a lot of authority to determine how to enforce and interpret the law, there are important limitations to that authority. Their actions must be consistent with the Constitution and the laws passed by Congress. One such law, called the Administrative Procedure Act, generally requires that rules go through the aforementioned notice-and-comment rule-making process. A federal agency that wants to issue a new rule or make substantive changes to an existing one usually has to let the public know what it’s thinking about doing, give the public time to provide feedback, and then respond to that feedback when it announces its final rule. When the Trump administration decided to sidestep that process, taking the position that the normal rule doesn’t apply here, lawsuits were quickly filed challenging the new rule and raising this procedural hurdle (in addition to other substantive objections). In suing Trump for failing to comply with the APA’s notice-and-comment requirement, left-leaning organizations and states were simply following the playbook used by their conservative counterparts during the Obama years. When it was Obama bypassing the notice-and-comment requirement, courts repeatedly concluded that he couldn’t do that—even when he had the sort of sound legal rationale that Trump is not offering here. Perhaps the most famous example of this was when Texas and other states sued the Obama administration for, among other things, failing to go through notice-and-comment rule-making in its decision to implement Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), a program directing federal officials to exercise their discretion on a case-by-case basis to defer removal of certain parents of U.S. citizens and legal permanent residents [LPRs]. Indeed, it was that failure that led a federal district court in Texas to issue a nationwide injunction halting the program before it even began. (On appeal, the U.S. Court of Appeals for the 5th Circuit, in a divided decision, concluded that the program was unlawful on additional grounds, and that ruling was affirmed by a deadlocked Supreme Court.) That wasn’t the only time an Obama-era rule was stalled, at least in part, because the administration hadn’t gone through notice-and-comment rule-making. Last year, 13 states and agencies and two local school districts sued federal agencies in part over a letter issued by the Department of Education which provided guidance saying that transgender students should be able to use the restroom consistent with their gender identity. Rightly or wrongly, a different federal district court in Texas found that the plaintiffs “would likely succeed on the merits that Defendants violated the notice and comment requirements of the APA.” And yet another Obama-era rule—this one designed to prevent companies from skipping out on tax liability by using a smaller foreign intermediary company as an offshore base—was enjoined earlier this month solely because the IRS and Treasury Department failed to comply with notice-and-comment requirements.

#### Notice-and-comment is key to effective agency regulation.

Staszewski and Sant’Ambrogio 18 Michael Sant’Ambrogio Glen Staszewski Michigan State University College of Law Michigan State University College of Law, 2018, “PUBLIC ENGAGEMENT WITH AGENCY RULEMAKING,” Administrative Conference of the United States, 11/19, pp. 10-12 Accessed 12/03/2018 //jsaltman

* Participation key to promulgate effective regulations
* Creates dependency cycles that work off of outside parties, alluminates perspectives

One of the primary goals of public participation in rulemaking is to provide agencies with the information they need to promulgate effective rules and regulations. Rules and regulations are effective when they achieve roughly their intended benefits at roughly their expected costs in the way anticipated by the agency decision-maker. This largely turns on the quality of information available to the agency when it is developing the rule. Congress delegates decisions to agencies, in part, because of their subject-matter expertise in their regulatory areas. 38 Agencies develop this expertise through the personnel they hire, the research they conduct, and the experience they develop administering federal programs. But even agencies with deep in-house knowledge depend upon outside parties for a great deal of information. In particular, agencies need information from the industries they regulate, other experts, and citizens with situated knowledge of the field in order to understand the problems they seek to address, the potential regulatory solutions, their attendant costs, and the likelihood of achieving satisfactory compliance.39 The notice-and-comment process “ensure[s] that agency regulations are tested via exposure to diverse public comment.” 40 The Administrative Procedure Act (APA) generally requires agencies to publish proposed rules in the Federal Register and accept comments on their proposals from any interested member of the public.41 Moreover, agencies must read the public comments and respond to those that raise salient issues, explaining why and how they decided to proceed in light of or in spite of particular comments.42 These procedures, and public participation in rulemaking more generally, are designed to provide agencies with more and better information upon which to base their regulatory choices. 43 Public participation in rulemaking “broadens an agency’s perspective, which otherwise might not extend beyond the views of the staff or the client groups with whom the staff regularly consults.” 44 The public may raise problems the agency has not seen, illuminate direct and collateral effects, propose solutions the agency has not considered, and identify unintended consequences of certain actions. Potential regulatory beneficiaries and their advocates can provide agencies with information about the problems agencies seek to address and the impact of policies on individuals. 45 Regulated parties can provide agencies with information about the workability and costs of different proposals, collateral consequences, and the difficulty of achieving compliance.46 At the most basic level, public participation may help to clarify ambiguities in an agency proposal that would undermine the agency’s goals merely due to confusion on the part of the public regarding what a rule requires. The information justification for public participation does not necessarily call for engaging all members of the public in all rulemakings. Rather, it requires agencies to engage those members of the public with information the agency needs based on the particular regulatory decision the agency must make. This will usually be a smaller “public” than the public as a whole. It will generally include those who are likely to benefit or be burdened by a regulatory proposal, and those with situated knowledge of the subject of regulation. But members of these groups may not all have useful information in equal measure. For example, the agency may possess more information about the public health consequences of a pollutant than about the feasibility of installing different pollution control devices. Thus, the slice of the public likely to have the most useful information for the agency will depend upon the nature of the specific rulemaking.47 Therefore, the information justification for public participation requires agencies to design public engagement in a way that is most likely to obtain the information they need in each particular rulemaking. There is no one-size-fits-all approach. To be sure, agencies are not always aware of all the information they need. It is one thing to plan for soliciting public comments on “known unknowns”; another to plan for “unknown unknowns,” such as unintended consequences. Thus, while designing public engagement around specific rules, agencies also need more general strategies to ensure they obtain information they might not anticipate but nevertheless would be quite valuable for crafting effective regulation. The notice-and-comment process is one such tool, notwithstanding the shortcomings discussed in this Report. But in most cases the agency will be able to identify specific information that it needs for a particular rule and the members of the public most likely to have it. Accordingly, the need for better information has generally been the primary justification for agency efforts to enhance public engagement beyond the general provisions of the noticeand-comment process.

#### EPA regs that are proactive and flexible prevent dangerous nano but capture its upsides

Reese ’13 Michelle Reese, J.D., 2013, Case Western Reserve University School of Law, “Nanotechnology: Using Co-regulation to Bring Regulation of Modern Technologies into the 21st Century”, Health Matrix: Journal of Law Medicine, 23 Health Matrix 537, Fall, Lexis

* Regulatory agencies must properly balance rules and chemical manufacturing for nanoparticles

Nevertheless, nanotechnology may also present new risks. Scientists are not sure whether nanotechnology poses any serious health hazards to humans or the environment. Considering our wide exposure to nanotechnology, it is critical that we identify potential risks and impose regulations that strike a balance between accessing the benefits of nanotechnology and limiting the foreseeable harm to the environment and public health. Nanotechnology is the manipulation of matter on an atomic scale to create tiny, functional structures. n3 These structures are incredibly small: one nanometer is precisely one-billionth of a meter. n4 Nanotechnology is defined as the production of materials that are between one and one-hundred nanometers in size. n5 Although they cannot be seen with the naked eye, these microscopic structures called "nanoparticles" have been proven to benefit humans in a variety of ways. For example, they can lead to new medical treatments. n6 They also can be used to develop [\*539] building materials with a very high strength-to-weight ratio. n7 Sunscreen and cosmetics that make use of nanoparticles apply more smoothly and evenly to human skin. n8 Other examples of products that utilize nanoparticles include stain-resistant clothing, lightweight golf clubs, bicycles, car bumpers, antimicrobial wound dressings, and synthetic bones. n9 While there are many benefits presented by nanotechnology, there are also potential risks. Studies have indicated that nanoparticles called carbon nanotubes act like asbestos within the human body. n10 Cells that are exposed to nanostructures called "buckyballs" n11 have been shown to undergo slowed or even halted cell division. n12 In general, the small size and high surface-area-to-volume ratio of nanoparticles indicates a higher potential for toxicity. n13 The application of nanotechnology to drug development has aided the treatment of common life-threatening diseases while concurrently posing toxic side effects. n14 For example, carbon nanotubes n15 may be used to enhance cancer treatments, but there is also an indication that the nanotubes themselves might ironically have a carcinogenic effect on the human body. n16 Certain nanoparticles can be used to enhance water filtration systems, but there are concerns that the production of nanoscale products may lead to new types of water pollution. n17 Common [\*540] to these examples is the difficulty in determining whether the benefits of nanotechnology will outweigh the risks. One place to turn for answers is the regulatory agency tasked with investigating the risks posed by nanotechnology. The Environmental Protection Agency (EPA) has the regulatory authority to assess the environmental and public health risks associated with nanotechnology, and to prescribe regulations as needed to prevent or reduce those risks. n18 Unfortunately, authority to assess those risks does not mean the EPA has adequate tools to do so. n19 Nanotechnology is becoming ubiquitous as the industry continues to expand, and new products are being created every day. n20 The need for thorough risk assessment, followed by appropriate risk management, is becoming more important as potential environmental and public exposure to nanoparticles is becoming more common. n21 Nanotechnology is not categorically dangerous. n22 The current danger is that it is unknown whether nanoparticles present any risks to the environment and public health. As more common household products are created or enhanced with nanoparticles, public exposure to nanotechnology is increasing rapidly. n23 This increasing public exposure indicates an urgent need for risk assessment. And as exposure increases, it becomes more important that the EPA be able to determine what risks will accompany that exposure, if any, so that it can properly balance the risks against the benefits and promulgate the most effective rules. Generally speaking, the EPA is familiar with assessing risks and regulating new products. The EPA has authority through the Toxic Substances Control Act (TSCA) to regulate chemical manufacturing. n24 TSCA requires manufacturers to inform the EPA of the potential risks associated with a new product, or new uses for an existing product, before production begins. n25 This gives the EPA an opportunity to prohibit or limit the manufacturing of that substance. n26 While this seems [\*541] to suggest that the EPA is well-equipped to manage the potential risks of products containing nanoparticles, some say that TSCA is outdated and that it will be difficult to use this older statute to regulate modern technology. n27

#### Nano and AI are coming and cause global war---U.S. regulation solves

Tate ’15 Jitendra S. Tate, Associate Professor of Manufacturing Engineering at the Ingram School of Engineering, Texas State University, et al., “Military And National Security Implications Of Nanotechnology”, The Journal of Technology Studies, Volume 41, Number 1, Spring, <https://scholar.lib.vt.edu/ejournals/JOTS/v41/v41n1/tate.html>

* AI inevitable, regulatory breakthroughs are key to prevent future weapons off of it and arms race
* Independently, an AI self-replicating plague!

All branches of the U.S. military are currently conducting nanotechnology research, including the Defense Advanced Research Projects Agency (DARPA), Office of Naval Research (ONR), Army Research Office (ARO), and Air Force Office of Scientific Research (AFOSR). The United States is currently the leader of the development of nanotechnologybased applications for military and national defense. Advancements in nanotechnology are intended to revolutionize modern warfare with the development of applications such as nano-sensors, artificial intelligence, nanomanufacturing, and nanorobotics. Capabilities of this technology include providing soldiers with stronger and lighter battle suits, using nano-enabled medicines for curing field wounds, and producing silver-packed foods with decreased spoiling rate ( Tiwari, A., Military Nanotechnology, 2004 ). Although the improvements in nanotechnology hold great promise, this technology has the potential to pose some risks. This article addresses a few of the more recent, rapidly evolving, and cutting edge developments for defense purposes. To prevent irreversible damages, regulatory measures must be taken in the advancement of dangerous technological developments implementing nanotechnology. The article introduces recent efforts in awareness of the societal implications of military and national security nanotechnology as well as recommendations for national leaders. Keywords: Nanotechnology, Implications, modern warfare INTRODUCTION Advances in nano-science and nanotechnology promise to have major implications for advances in the scientific field as well as peace for the upcoming decades. This will lead to dramatic changes in the way that material, medicine, surveillance, and sustainable energy technology are understood and created. Significant breakthroughs are expected in human organ engineering, assembly of atoms and molecules, and the emergence of a new era of physics and chemistry. Tomorrow’s soldiers will have many challenges such as carrying self-guided missiles, jumping over large obstacles, monitoring vital signs, and working longer periods with sleep deprivation. ( Altmann & Gubrud, Anticipating military nanotechnology, 2004 ). This will be achieved by controlling matter at the nanoscale (1-100nm). A nanometer is one-billionth of a meter. This article considers the social impact of nanotechnology (NT) from the point of view of the possible military applications and their implications for national defense and arms control. This technological evolution may become disruptive; meaning that it will come out of mainstream. Ideas that are coming forth through nanotechnology are becoming very popular and the possibilities will in practice have profound implications for military affairs as well as relations between nations and thinking about war and national security ( Altmann J. , Military Uses of Nanotechnology: Perspectives and Concerns, 2004 ). In this article some of the potential applicability uses of recent nanotechnology driven applications within the military are introduced. This article also discusses how the impact of a rapid technological evolution in the military will have implications on society. POTENTIAL MILITARY TECHNOLOGIES Magneto rheological Fluid (MR Fluid) A magneto-rheological-fluid is a fluid where colloidal ferrofluids experience a body force on the entire material that is proportional to the magnetic field strength ( Ashour, Rogers, & Kordonsky, 1996 ). This allows the status of the fluid to change reversibly from a liquid to solid state. Thus, the fluid becomes intelligently controllable using the magnetic field. MR fluid consists of a basic fluid, ferromagnetic particles, and stabilizing additives ( Olabi & Grunwald, 2007 ). The ferromagnetic particles are typically 20-50μm in diameter whereas in the presence of the magnetic field, the particles align and form linear chains parallel to the field ( Ahmadian & Norris, 2008 ). Response times 21 that require impressively low voltages are being developed. Recently, ( Ahmadian & Norris, 2008 ) has shown the ability of MR fluids to handle impulse loads and an adaptable fixing for blast resistant and structural membranes. For military applications, the strength of the armor will depend on the composition of the fluid. Researchers propose wiring the armor with tiny circuits. While current is applied through the wires, the armor would stiffen, and while the current is turned off, the armor would revert to its liquid, flexible state. Depending on the type of particles used, a variety of armor technology can be developed to adapt for soldiers in different types of battle conditions. Nanotechnology could increase the agility of soldiers. This could be accomplished by increasing mechanical properties as well as the flexibility for battle suit technology. Nano Robotics Nanorobotics is a new emerging field in which machines and robotic components are created at a scale at or close to that of a nanometer. The term has been heavily publicized through science fiction movies, especially the film industry, and has been growing in popularity. In the movie Spiderman , Peter Parker and Norman Osborn briefly talk about Norman’s research which involves nanotechnology that is later used in the Green Goblin suit. Nanorobotics specifically refers to the nanotechnology engineering discipline or designing and building nano robots that are expected to be used in a military and space applications. The terms nanobots, nanoids, nanites, nanomachines or nanomites have been used to describe these devices but do not accurately represent the discipline. Nanorobotics includes a system at or below the micrometer range and is made of assemblies of nanoscale components with dimensions ranging from 1 to 100nm ( Weir, Sierra, & Jones, 2005 ). Nanorobotics can generally be divided into two fields. The first area deals with the overall design and control of the robots at the nanoscale. Much of the research in this area is theoretical. The second area deals with the manipulation and/or assembly of nanoscale components with macroscale manipulators ( Weir, Sierra, & Jones, 2005 ). Nanomanipulation and nanoassembly may play a critical role in the development and deployment of artificial robots that could be used for combat. According to Mavroidis et al. ( 2013 ), nanorobots should have the following three characteristic abilities at the nano scale and in presence of a large number in a remote environment. First they should have swarm intelligence. Second the ability to self-assemble and replicate at the nanoscale. Third is the ability to have a nano to macro world interface architecture enabling instant access to the nanorobots with control and maintenance. ( Mavroidis & Ferreira, 2013 ) also states that collaborative efforts between a variety of educational backgrounds will need to work together to achieve this common objective. Autonomous nanorobots for the battlefield will be able to move in all media such as water, air, and ground using propulsion principles known for larger systems. These systems include wheels, tracks, rotor blades, wings, and jets ( Altmann & Gubrud, Military, arms control, and security aspects of nanotechnology, 2004 ). These robots will also be designed for specific military tasks such as reconnaissance, communication, target destination, and sensing capabilities. Self-assembling nanorobots could possibly act together in high numbers, blocking windows, putting abrasives into motors and other machines, and other unique tasks. Artificial Intelligence Artificial intelligence (AI) is a vast emerging field that can be very thought provoking. AI has been seen recently in a number of movies and television shows that have predicted what the possibility of an advanced intelligence could do to our society. This intellect could possibly outperform human capabilities in practically every field from scientific research to social interactions. Aspirations to surpass human capabilities include tennis, baseball, and other daily tasks demanding motion and common sense reasoning (Kurzweil, 2005). Examples where AI could be seen include chess playing, theorem proving, face and speech recognition, and natural language understanding. AI has been an active and dynamic field of research and development since its establishment in 1956 at the Dartmouth Conference in the United States ( Cantu-Ortiz, 2014 ). In past decades, this has led to the development of smart systems, including phones, laptops, medical instruments, and navigation software. One problem with AI is that people are coming to a conclusion about its capabilities too soon. Thus, people are becoming afraid of the probability that an artificial intelligent system could possibly expand and turn on the human race. True artificial intelligence is still very far from becoming “alive” due to our current technology. Nanotechnology might advance AI research and development. In nanotechnology, there is a combination of physics, chemistry and engineering. AI relies most heavily on biological influence as seen genetic algorithm mutations, rather than chemistry or engineering. Bringing together nanosciences and AI can boost a whole new generation of information and communication technologies that will impact our society. This could be accomplished by successful convergences between technology and biology ( Sacha & P., 2013 ). Computational power could be exponentially increased in current successful AI based military decision behavior models as seen in the following examples. Expert Systems Artificial intelligence is currently being used and evolving in expert systems (ES). An ES is an “intelligent computer program that uses knowledge and interference procedures to solve problems that are difficult enough to require significant human expertize to their solution” ( Mellit & Kalogirou, 2008 ). Results early on in its development have shown that this technology can play a significant impact in military applications. Weapon systems, surveillance, and complex information have created numerous complications for military personnel. AI and ES can aid commanders in making decisions faster than before in spite of limitations on manpower and training. The field of expert systems in the military is still a long way from solving the most persistent problems, but early on research demonstrated that this technology could offer great hope and promise ( Franklin, Carmody, Keller, Levitt, & Buteau, 1988 ). Mellit et al. argues that an ES is not a program but a system. This is because the program contains a variety of different components such as a knowledge base, interference mechanisms, and explanation facilities. Therefore they have been built to solve a range of problems that can be beneficial to military applications. This includes the prediction of a given situation, planning which can aid in devising a sequence of actions that will achieve a set goal, and debugging and repair-prescribing remedies for malfunctions. Genetic Algorithms Artificial intelligence with genetic algorithms (GA) can tackle complex problems through the process of initialization, selection, crossover, and mutation. A GA repeatedly modifies a population of artificial structures in order to adjust for a specific problem (Prelipcean et al., 2010). In this population, chromosomes evolve over a number of generations through the application of genetic operations. This evolution process of the GA allows for the most elite chromosomes to survive and mate from one generation to the next. Generally, the GA will include three genetic operations of selection, crossover, and mutation. This is currently being applied to solving problems in military vehicle scheduling at logistic distribution centers. Nanomanufacturing Nanomanufacturing is the production of materials and components with nanoscale features that can span a wide range of unique capabilities. At the nanoscale, matter is manufactured at lengthscales of 1-100nm with precise size and control. The manufacturing of parts can be done with the “bottom up” from nano sized materials or “top down” process for high precision. Manufacturing at the nanoscale could produce new features, functional capabilities, and multi-functional properties. Nanomanufacturing is distinguished from nanoprocessing, and nanofabrication, whereas nanomanufacturing must address scalability, reliability and cost effectiveness ( Cooper & Ralph, 2011 ). Military applications will need to be very tough and sturdy but at the same time very reliable for use in harsh environments with the extreme temperatures, pressure, humidity, radiation, etc. The use of nano enabled materials and components increase the military’s in-mission success. Eventually, these new nanotechnologies will be transferred for commercial and public use. Cooper et al. makes known how nanomanufacuring is a multi-disciplinary effort that involves synthesis, processing and fabrication. There are however a great number of challenges that as well as opportunities in nanomanufacturing R&D such as; Predictions from first principles of the progress and kinetics of nanosynthesis and nano-assembly processes. 23 Understand and control the nucleation and growth of nanomaterial and nanostructures and asses the effects of catalysts, crystal orientation, chemistry, etc. on growth rates and morphologies. R&D IN THE USA The USA is proving to have a lead in military research and development in nanotechnology. Research spans under umbrella of applications related to defense capabilities. NNI has provided funds in which one quarter to one third goes to the department of defense – in 2003, $ 243 million of $774 million. This is far more than any country and the US expenditure would be five times the sum of all the rest of the world ( Altmann & Gubrud, Military, arms control, and security aspects of nanotechnology, 2004 ). INITIATIVES The National Nanotechnology Initiative The National Nanotechnology Initiative (NNI) was unveiled by President Clinton in a speech that he gave on science and technology policy in January of 2000 where he called for an initiative with funding levels around 500 million dollars ( Roco & Bainbridge, 2001 ). The initiative had five elements. The first was to increase support for fundamental research. The second was to pursue a set of grand challenges. The third was to support a series of centers of excellence. The fourth was to increase support for research infrastructure. The fifth is to think about the ethical, economic, legal and social implications and to address the education and training of nanotechnology workforce ( Roco & Bainbridge, 2001 ). NNI brings together the expertise needed to advance the potential of nanotechnology across the nation. ISN at MIT The Institute for Soldier Nanotechnologies (ISN) initiated at the Massachusetts Institute of Technology in 2002 ( Bennet-Woods, 2008 ). The mission of ISN is to develop battlesuit technology that will increase soldier survivability, protection, and create new methods of detecting toxic agents, enhancing situational awareness, while decreasing battle suit weight and increasing flexibility. ISN research is organized into five strategic areas (SRA) designed to address broad strategic challenges facing soldiers. The first is developing lightweight, multifunctional nanostructured materials. Here nanotechnology is being used to develop soldier protective capabilities such as sensing, night vision, communication, and visible management. Second is soldier medicine – prevention, diagnostics, and far-forward care. This SRA will focus on research that would enable devices to aid casualty care for soldiers on the battle field. Devices would be activated by qualified personnel, the soldier, or autonomous. Eventually, these devices will find applications in medical hospitals as well. Third is blast and ballistic threats – materials damage, injury mechanisms, and lightweight protection. This research will focus on the development of materials that will provide for better protection against many forms of mechanical energy in the battle field. New protective material design will decrease the soldier’s risk of trauma, casualty, and other related injuries. The fourth SRA is hazardous substances sensing. This research will focus on exploring advanced methods of molecularly complicated hazardous substances that could be dangerous to soldiers. This would include food-borne pathogens, explosives, viruses and bacteria. The fifth and final is nanosystems integration –flexible capabilities in complex environments. This research focuses on the integration of nano-enabled materials and devices into systems that will give the soldier agility to operate in different environments. This will be through capabilities to sense toxic chemicals, pressure, and temperature, and allow groups of soldiers to communicate undetected (Institute for Soldier Nanotechnologies). SOCIAL IMPLICATIONS The purpose of country’s armed forces is to provide protection from foreign threats and from internal conflict. On the other hand, they may also harm a society by engaging in counter- productive warfare or serving as an economic burden. Expenditures on science and technology to develop weapons and systems sometimes produces side benefits, such as new medicines, technologies, or materials. Being ahead in military technology provides an important advantage in armed conflict. Thus, all potential opponents have a strong motive for military research and development. From the perspective of international security and arms control it appears that in depth studies of the social science of these implications has hardly begun. Warnings about this emerging technology have been sounded against excessive promises made too soon. The public may be too caught up with a “nanohype” ( Gubrud & Altmann, 2002 ). It is essential to address questions of possible dangers arising from military use of nanotechnology and its impacts on national security. Their consequences need to be analyzed. NT and Preventative Arms Control Background The goal of preventive arms control is to limit how the development of future weapons could create horrific situations, as seen in the past world wars. A qualitative method here is to design boundaries which could limit the creation of new military technologies before they are ever deployed or even thought of. One criterion regards arms control and how the development of military and surveillance technologies could go beyond the limits of international law warfare and control agreements. This could include autonomous fighting war machines failing to define combatants of either side and Biological weapons could possibly give terrorist circumvention over existing treaties ( Altmann & Gubrud, Military, arms control, and security aspects of nanotechnology, 2004 ). The second criterion is to prevent destabilization of the military situation which emerging technologies could make response times in battle much faster. Who will strike first? The third criterion, according to Altman & Gubrud, is how to consider unintended hazards to humans, the environment, and society. Nanoscience is paving the way for smaller more efficient systems which could leak into civilian sectors that could bring risks to human health and personal data. Concrete data on how this will affect humans or the environment is still uncertain. Arms Control Agreements The development of smaller chemical or biological weapons that may contain less to no metal could potentially violate existing international laws of warfare by becoming virtually undetectable. Smaller weapons could fall into categories that would undermine peace treaties. The manipulation of these weapons by terrorist could give a better opportunity to select specific targets for assassination. Anti- satellite attacks by smaller more autonomous satellites could potentially destabilize the space situation. Therefore a comprehensive ban on space weapons should be established ( Altmann & Gubrud, 2002 ). Autonomous robots with a degree of artificial intelligence will potentially bring great problems. The ability to identify a soldiers current situation such as a plea for surrender, a call for medical attention, or illness is a a very complicated tasks that to an extent requires human intelligence. This could potentially violate humanitarian law. Stability New weapons could pressure the military to prevent attacks by pursuing the development of new technologies faster. This could lead to an arms race with other nations trying to attain the same goal. Destabilization may occur through faster action,

and more available nano systems. Vehicles will become much lighter and will be used for surveillance. This will significantly reduce time to acquire a targets location. Medical devices implanted in soldiers’ bodies will enable the release of drugs that influence mood and response times. For example, an implant that attaches to the brains nervous system could give the possibility to reduce reaction time by processing information much faster than usual ( Altmann & Gubrud, Anticipating military nanotechnology, 2004 ). Artificial intelligence based genetic algorithms could make tactical decisions much faster through computational power by adapting to a situations decision. Nano robots could eavesdrop, manipulate or even destroy targets while at the same time being undetected ( Altmann J. , Military Uses of Nanotechnology: Perspectives and Concerns, 2004 ). Environment Society & Humans Human beings have always been exposed to natural reoccurring nanomaterials in nature. These particles may enter the human body through respiration, and ingestion ( Bennet- Woods, 2008 ). Little been known about how manufactured nanoscale materials will have an impact to the environment. Jerome (2005) argues that nanomaterials used for military uniforms could break of and enter the body and environment. New materials could destroy species of plants and animal. Fumes from fuel additives could be inhaled by military personnel. Contaminant due to weapon blasts could lead to diseases such as cancer or leukemia due to absorption through the skin or inhalation. Improper disposal of batteries using nano particles could also affect a wide variety of species. An increase in nanoparticle release into the environment could be aided by waste streams from military research facilities. Advanced nuclear weapons that are miniaturized may leave large areas of soil contaminated with radioactive materials. There is an increase in toxicity as the particle size decrease which could cause unknown environmental changes. Bennet-woods ( 2008 ) argues that there is great uncertainty in which the way nano materials will degrade under natural conditions and interact with local organisms in the environment. Danger to society could greatly be affected due to self-replicating, mutating, mechanical or biological plagues. In the event that these intelligent nano systems were to be unleashed, they could potentially attack the physical world. There are a number of applications that will be developed with nanotechnology that could potentially crossover from the military to national security that can harm the civilian sector ( Bennet-Woods, 2008 ). There is a heightened awareness that new technologies will allow for a more efficient access to personal privacy and autonomy ( Roco & Bainbridge, 2005 ). Concerns regarding artificial intelligence acquiring a vast amount of personal data, voice recognition, and financial data will also arise. Implantable brain devices, intended for communication, raise concerns for actually observing and manipulating thoughts. Some of the most feared risks due to nanotechnology in the society are the loss of privacy ( Flagg, 2005 ). Nano sensors developed for the battlefield could be used for eavesdropping and tracking of citizens by state agencies. This could lead to improvised warfare or terrorism. Bennet-Woods ( 2008 ) argues that there should be an outright ban on nanoenabled tracking and surveillance devices for any purpose. Nanotechnology in combination with biotechnology and medicine raise concerns regarding human safety. This includes nanoscale drugs that may allow for improvements in terrorism alongside more efficient soldiers for combat. Bioterrorism could greatly be improved through nano-engineered drugs and chemicals ( Milleson, 2013 ). Body implants could be used by soldiers to provide for better fighting efficiency but in the society, the extent in which the availability of body manipulation will have to be debated at large ( Altmann J. , Nanotechnology and preventive arms control, 2005 ). Brain implanted stimulates could become addictive and lead to health defects. The availability of body and brain implants could have negative effects during peace time. Milleson ( 2013 ) argues that there is fear that this technology could destabilize the human race, society, and family. Thus, the use in society should be delayed for at least a decade. CONCLUSIONS Nanoscience will lead to a revolutionary development of new materials, medicine, surveillance, and sustainable energy. Many applications could arrive in the next decade. The US is currently in the lead in nanoscience research and development. This equates to roughly five times the sum of all the rest of world. It is essential to address the potential risks that cutting edge military applications will have on warfare and civilian sector. There is a potential for mistrust in areas where revolutionary changes are expected. There are many initiatives by federal agencies, industry, and academic institutions pertaining to nanotechnology applications in military and national security. Preventive measures should be coordinated early on among national leaders. Scientists propose for national leaders to follow general guidelines. There shall be no circumvention of existing treaties as well as a ban on space weapons. Autonomous robots should be greatly restricted. Due to rapidly advancing capabilities, a technological arms race should be prevented at all costs. Nanomaterials could greatly harm humans and their environment therefore nations should work together to address safety protocols. The national nanotechnology of different nations should build confidence in addressing the social implications and preventive arms control from this technological revolution.

## Advantage 1

### Economy D---1NC

#### No correlation between economic decline and war.

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”   
Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

### Solvency---1NC

#### In the plantext: “adopt” doesn’t mean or encompass ‘enforce’—the aff solves nothing

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

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

### Rulemaking---1NC

#### The aff’s rulemaking fails and gets quashed by the courts

Werden 8/15 (Greg Werden is the former Senior Economic Counsel, Antitrust Division, U.S. Department of Justice, “Can the FTC Turn Back the Clock?” forthcoming in ABA Antitrust Section, Antitrust online, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3909851>, Date Written: August 15, 2021, thanks to y2k)

In an earlier article, Ms. Khan had suggested that the FTC could use its rulemaking power to preclude the owners of Internet platforms from doing business on their own platforms.61 Based on her work on the October 2020 report issued by the House Subcommittee on Antitrust, Commercial and Administrative Law,62 she might be contemplating a rulemaking to declare selfpreferencing an unfair method of competition when done by a dominant Internet platform. The fundamental problem the FTC would confront is that no two of the potentially dominant platforms are alike. What self-preferencing means differs across platforms, as does its impact, so any specific self-preferencing remedies should be the product of adjudicative proceedings. Chair Khan will have to move expeditiously if the Supreme Court is to review her initiatives while she remains chair. The Court likely would be unanimous in holding that harm to competition must be what makes a practice an unfair method of competition, 63 and it might be prepared to hold the FTC unconstitutional,64 so Ms. Khan should take care. All Chair Khan should ask from the courts is reasonable leeway on proof of harm to competition, especially as to likelihood and immediacy. And the Department of Justice should have just as much leeway because the Sherman Act directed the Attorney General to institute proceedings to “prevent” violations. 65 Chair Khan’s writings before becoming chairman place her in the vanguard of a populist movement advocating radical reform, but a radical agenda as FTC Chair could be stymied by the courts. The best approach is likely to be incremental change through fact-based FTC decisions focused on competitive effects.

### Platforms---1NC

#### Even if the aff leads to Big Tech break-up, that causes a crop of 30 new megacompanies, but fails to spur meaningful change

**Karabell 20** (Zachary Karabell– PhD from Harvard, Head of Global Strategies at Envestnet financial services firm., 1-23-20,"Don't Break Up Big Tech," Wired, <https://www.wired.com/story/dont-break-up-big-tech/> )

Now imagine each of the Big Tech giants gets disassembled in this way. We might end up with a landscape of 30 companies instead of half a dozen. A quintupling of industry players would, by definition, create a more competitive field. But competition in the antitrust framework, stretching back to the original Sherman Anti-Trust Bill in 1890 and then subsequent legislation such as the Clayton Bill in 1914, is not a virtue or need in and of itself. It is the means to a set of ends—namely, “economic liberty,” unfettered trade, lower prices, and better services for consumers. By itself, competition does not guarantee anything.

Meanwhile, it’s hard to see how going from six companies to 30 would give consumers any more choice of services or more control over their data, or how it would help to nurture small businesses and lower costs to consumers and society. Perhaps there would be openings for companies with different business models, ones that brand themselves as valuing privacy and empowering individual ownership of data. This can’t be ruled out, but the nature of data selling and data mining is so embedded in the current models of most IT companies that it is very hard to see how such businesses could thrive unless they charged more to consumers than consumers have so far been willing to pay. In the meantime, the 30 new megacompanies would still have immense competitive advantages over smaller startups.

## Advantage 2

### LIO D---1NC

#### No LIO impact---it’s a myth.

Staniland 18, Associate Professor of Political Science and Chair of the Committee on International Relations at the University of Chicago. (Paul, 7/29/18, “Misreading the “Liberal Order”: Why We Need New Thinking in American Foreign Policy”, *Lawfare*; https://www.lawfareblog.com/misreading-liberal-order-why-we-need-new-thinking-american-foreign-policy)

Pushing back against Trump’s foreign policy is an important goal. But moving forward requires a more serious analysis than claiming that the “liberal international order” was the centerpiece of past U.S. foreign-policy successes, and thus should be again. Both claims are flawed. We need to understand the limits of the liberal international order, where it previously failed to deliver benefits, and why it offers little guidance for many contemporary questions.

First, advocates of the order tend to skim past the policies pursued under the liberal order that have not worked. These mistakes need to be directly confronted to do better in the future.

Proponents of the order, however, often present a narrow and highly selective reading of history that ignores much of the coercion, violence, and instability that accompanied post-war history. Problematic outcomes are treated as either aberrant exceptions or as not truly characterizing the order. One recent defense of the liberal order by prominent liberal institutionalists Daniel Deudney and G. John Ikenberry, for instance, does not mention Iraq, Afghanistan, Vietnam, or Libya. Professors Stephen Chaudoin, Helen Milner, and Dustin Tingley herald the order’s “support for freedom, democracy, human rights, a free press.” Kori Schake writes that Western democracies’ wars are “about enlarging the perimeter of security and prosperity, expanding and consolidating the liberal order.” Historian Hal Brands argues that the order has advocated “political liberalism in the form of representative government and human rights; and other liberal concepts, such as nonaggression, self-determination, and the peaceful settlement of disputes.”

Other analysts have persuasively argued that these accounts create an “imagined” picture of post-World War II history. Patrick Porter outlines in detail how coercive, violent, and hypocritical U.S. foreign policy has often been. To the extent an international liberal order ever actually existed beyond a small cluster of countries, writes Nick Danforth, it was recent and short-lived. Thomas Meaney and Stephen Wertheim further argue that “critics exaggerate Mr. Trump’s abnormality,” situating him within a long history of the pursuit of American self-interest. Graham Allison—no bomb-throwing radical—has recently written that the order was a “myth” and that credit for the lack of great power war should instead go to nuclear deterrence. Coercion and disregard for both allies and political liberalism have been entirely compatible with the “liberal” order.

The last two decades have been a bumpy ride for U.S. foreign policy. Since 9/11, we have seen the disintegration of Syria, Yemen, and Libya, a war without end in Afghanistan, the collapse of the Arab Spring, the rise and resurgence of the Islamic State, and the distinctly mixed success of strategies aimed at managing China’s rise. At home, the growth of a national-security state has placed remarkable power in the hands of Donald Trump. Simply returning to the old order is no guarantee of good results. Grappling openly with failure and self-inflicted wounds—while also acknowledging clear benefits of the order—is essential for moving beyond self-congratulatory platitudes.

### Turn---1NC

#### TURN: Local antitrust enforcement is preferable to the plan—their author

1AC Johannsen & Gonzalez ’21 [German; PhD Candidate and LLM @ Max Planck Institute for Innovation and Competition; and Andrés; LLM and Chilean Competition Law Compliance Officer; “Digital Platforms & Economic Dependence in Chile Any Room for Competition Theories of Harm without Dominance?”; <https://law.haifa.ac.il/images/ASCOLA16/GJAG.pdf>; 15 June 2021; originally AS]

5. Conclusion

Given the different economic realities (and problems) developing countries face vis-a-vis developed economies, law regimes should not be transplanted from one jurisdiction to another, without careful consideration of those differences. In the case of competition law, the different realities may drive competition law regimes to consider goals that escape the orthodoxy of the consumer welfare standard, for instance, non-welfare ones. Considering that the goals of a competition law regime shape their interpretation and enforcement, it is important to clarify what would these non-welfare goals entail.

The challenges that digital markets pose to competition law offers an opportunity to address this issue, due to the emergence of new theories of harm in which traditional rules and tests may be outdated. Specifically, it raises the question of whether a non-dominant undertaking could incur in an anticompetitive infringement and how different jurisdictions are prepared to deal with those issues. Moreover, as discussed along this paper, the scope of competition goals defined by each jurisdiction according to its own socioeconomic reality —in the case of Chile, a middle-income developing country— may be crucial to answer whether this jurisdiction is well equipped to face the referred challenges.

In our opinion, in the Chilean jurisdiction it is feasible to open up digital markets in the context of free competition in order to study possible anti-competitive effects of abuses of economic dependence in which dominance is not yet possible to prove. On the one hand, the TDLC's own jurisprudence has ruled in this sense in cases where the risks of anticompetitive effects are not as marked as in digital markets. On the other hand, this interpretation is consistent with the competition goals recognized by Chilean Courts in terms of safeguarding the freedom to compete and the competitive process. Naturally, this entails difficulties in balancing the risks of an anticompetitive effect. The most obvious one is that the dominance rule cannot be used as a differentiating element. On the other hand, it is not a hypothesis built on the basis of an effect that can be proven, but only on a probability of occurrence. This brings up the question about which benchmark to use in these cases.

Regarding intermediary digital platforms, their own economic rationality leads their behaviour to be aimed at achieving dominant power and, therefore, foreclosing the market to competition. In other words, many of their commercial relationships with suppliers and users contribute to this end, as they tend to increase network externalities and switching costs. However, the mere fact that the platform economy favours the monopolisation of markets would not be sufficient evidence to justify a sanction for infringement of free competition, according to current evidentiary standards (it is merely a structural element). In this context, it is essential to distinguish which conducts —from those with objective aptitude to foreclose the market— are objectionable to competition.

One criterion for differentiating between lawful and unlawful scenarios could be based on the type of conduct. This would require, however, a methodological refocusing when analysing unilateral conducts with anticompetitive potential. First, it should be determined whether economic dependence relationships exist. If so, secondly, it should be analysed the objective aptitude for the platform to reach a dominant position and, therefore, to foreclose the market. If such aptitude exists, thirdly, it should be determined whether the conduct is unfair. If it is considered unfair, it would be appropriate to declare the conduct as anticompetitive. By not relying on the dominance rule, such an analysis would not only be useful for cases of platforms that are not yet dominant, but also for those cases where they are dominant, but it is complex to prove it.

In the second scenario we explored —dependency-based exploitative conduct— things are less clear though. While the broad wording of Art. 3 generic and the recognition of equal access to markets as a goal of Chilean Competition Law grant an opening to try this theory of harm, the Chilean Competition Authorities are still far from considering this approach. In addition, given that currently Chilean Unfair Competition Law (Law 20.169) includes as unfair commercial practices the abusive conduct to the detriment of suppliers, it is unlikely that a potential plaintiff will use the TDLC to obtain relief. Moreover, Law 20.169 expressly states that in case of a guilty verdict, all backgrounds and documents of the case must be sent to the FNE in order to assess if it is necessary (in light of the gravity of the conduct) to initiate a proceeding before the TDLC. Therefore, the dominant litigation strategy regarding dependency-based exploitative conducts is the civil action contained in Law 20.169.

In the years to come it will be necessary to see to what extent the competition authorities —both the FNE and the TDLC— will adapt to the new challenges that the digital world brings for the well-functioning of markets. It is important to recognise that such challenges are of not only a technical nature, but ultimately opens up the question of competition goals. Globally, there is pressure to establish market rules that effectively limit the excessive economic power that a few players in the digital economy have achieved. In the case of Chile —as in Latin America— it should borne in mind that it is still a developing country with high levels of inequality. A pure efficiency-oriented approach normally does not provide solutions to these socio-economic issues. Therefore, a broader perspective is needed.

Introducing more explicit fairness-oriented elements in the competition assessment —e.g. due to an explicit protection of small and medium enterprises in the digital platforms context, as well as proposing new rules allowing to address anticompetitive conducts irrespective of the dominance rule seems a good way to update competition law to make it a system that promotes social welfare and not just the welfare of a privileged few. In this regard, new lines of investigations that —considering the economic reality and needs of developing countries— are aimed at reviewing the normative goals of competition law may shed light on the properness and readiness of those jurisdictions to address the challenges that the digital era brings for competition, especially in relation to increasing economic inequalities. Considering the above, perhaps developing countries' competition law regimes can even be better equipped to face these new challenges than the developed country legal regime, at least from a normative perspective, for two reasons: first, in these countries there may be a trend toward recognizing broader fairness-oriented competition goals; second, as Professor Fox argues108, developing countries do not have the path dependence that makes it harder for traditional competition jurisdictions —the US and the EU— to take new legislative routes.

### Enforcement Fails---1NC

#### US enforcement abroad fails—jurisdictional clashes

Bradshaw et al 17 (Ben Bradshaw is a partner and Julia Schiller a counsel in the Washington, DC office of O’Melveny & Myers LLP, Remi Moncel is an associate in O’Melveny’s San Francisco office, "International Comity in the Enforcement of U.S. Antitrust Law in the Wake of in Re Vitamin C," Antitrust 31, no. 2 (Spring 2017): 87-93)

Having found that Chinese law required defendants to violate U.S. antitrust law, the Second Circuit went on to consider whether the remaining factors in the Timberlane/ Mannington Mills balancing test weighed in favor of dismissal. The court concluded that they did.32 Of particular note, the court found that while the plaintiffs may have been unable to obtain a Sherman Act remedy in another forum, complaints as to China’s export policies could be adequately addressed through diplomatic channels and the World Trade Organization, of which both the United States and China are members.33 The court found it significant that there was no evidence that the defendants acted with the express purpose or intent to affect U.S. commerce or harm businesses in particular. Moreover, the regulations at issue were intended to assist China in its transition from a staterun economy and to remain a competitive participant in the global Vitamin C market.34 Finally, the court recognized that according to MOFCOM the exercise of jurisdiction had already negatively affected U.S.-China relations, and it would be unlikely that the injunctive relief obtained by the plaintiffs in the district court would be enforceable in China, just as a similar injunction issued in China against a U.S. company would be difficult to enforce in the United States.35 Upon consideration of all of these factors, the court concluded that exercising jurisdiction was inappropriate and dismissed the case.

### Countries Alt Cause---1NC

#### Platform alt causes---countries other than the US dominates

Kwet 20 (Michael Kwet is a Visiting Fellow of the Information Society Project at Yale Law School, A Digital Tech New Deal to break up Big Tech, 10-26, <https://www.aljazeera.com/opinions/2020/10/26/a-digital-tech-new-deal-to-break-up-big-tech>, thanks to y2k)

After “restoring competition” to the tech economy, those who will dominate as “new market entrants” on the “open” internet will still be companies from richer countries: the US, European powers, China, etc

, not low-income countries like Zimbabwe, Bolivia or Cambodia. And within low-income countries, the well-resourced classes will capture any new market opportunities that an antitrust push in the US may open.

# 2NC

## Regulation CP

### 2NC---Overview

#### Regulatory oversight solves best---comparative

Wheeler 20, was the 31st Chairman of the Federal Communications Commission (FCC) from 2013 to 2017. He is presently a Senior Fellow at the Shorenstein Center at Harvard Kennedy School and a Visiting Fellow at the Brookings Institution (Tom, et al, “New Digital Realities; New Oversight Solutions in the U.S.,” https://shorensteincenter.org/wp-content/uploads/2020/08/New-Digital-Realities\_August-2020.pdf)

The antitrust laws were created to protect competition in an industrial environment. The application of these statutes to the digital environment has been impeded not only by the challenge of applying industrial concepts to a digital reality but also by the evolution in jurisprudence over the last forty years. Today’s implementation of competition policy began in the 1970s with the broad adoption by courts and prosecutors of the so-called Chicago School’s assertion that most competition-related government interventions in the economy were counterproductive.11 The only true measure of a company’s market power, according to the strong version of the theory, is the effect on consumers as measured principally by prices. In the intervening decades this version of the “consumer welfare test” has become a conservative litmus test for judicial appointments and a guiding light of antitrust policy. It appears to have a majority of the United States Supreme Court as adherents. The 2018 decision in Ohio v. American Express Co. is both the first time the Supreme Court has addressed an antitrust claim involving a two-sided platform and an instance of the Court majority’s non-interventionist priors. The decision has, at least, increased the complexity of antitrust enforcement involving digital platforms. But without regard to its intrinsic merits, it illustrates one thing beyond any serious dispute: A process that began with a government complaint in October 2010 and not ultimately resolved until June 2018 is insufficient to deal with today’s digital platforms. Something more will be required. Such a “something” begins with the recognition of certain digital platforms (or certain components of them) as essential facilities. As common experience and multiple studies have illustrated, however, these essential services do not confront effective competition and are unlikely to do so in the future. The consequences are significant.12 The introduction of competition in the case of targeted advertising, for instance, would have as predictable consequences that advertisers would pay less, publishers would receive more, and consumers would see an improvement in the quality and quantity of services available online. While an important tool in the toolbox, it must be realized that antitrust remedies are blunt instruments. They are, for instance, an ex post response to a problem rather than an ex ante policy that would discourage such difficulties in the first place. Furthermore, antitrust enforcement is inherently uncertain and reliably lengthy, a period in which the targets continue their anticompetitive behavior. By the time of even successful conclusions, rapid tech changes often have redefined the relevance of the initial complaint (See US v. Microsoft). There is also a substantial question of whether courts rather than specialized regulatory agencies are best equipped to deal with the issues raised by the digital platforms. Professor Weiser cites Judge Easterbrook for the proposition that “courts are inherently ill-suited for such a role both because they lack the ability to gather, and the expertise to process, the necessary information.”13 Conclusion: Antitrust is an important tool but cannot be relied upon as the only tool. There must be realistic expectations as to what the tool can accomplish. There also must be a regulatory partner to the judicial remedy of antitrust. For a discussion of the evolution of antitrust law and its applicability to the current situation see Appendix One.

### 2NC---AT: 1---Perm do Both

#### Permutations have to include antitrust enforcement, otherwise they sever. This one doesn’t, because the two strategies are mutually exclusive.

#### The counterplan is mutually exclusive

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)

For decades, courts treated antitrust enforcement like a complement to regulation that could come into play when antitrust would not conflict with regula- tory objectives. The Supreme Court held in 1963 that unless antitrust and regu- lation are in direct conflict with each other, courts should try to “reconcile[] the operation of both.”77 Consistent with that principle, the Court subsequently held in Otter Tail Power v. United States that antitrust agencies could challenge conduct even if a regulatory agency already had authority to challenge that very same conduct.78 In a later case, Gordon v. New York Stock Exchange, the Court made clear that there must be actual or potential “plain repugnancy” between antitrust and the regulatory statute for a court to bar an antitrust claim.79 The doctrinal acceptance of complementary application of antitrust and regulation allowed the DOJ to bring one of the most significant antitrust cases ever against a regulated firm: the suit that broke up the decades old AT&T “Bell System” monopoly.80 Two cases in the last fifteen years have significantly weakened the “plain re- pugnancy” standard. In 2004, the Supreme Court ruled in Verizon Communica- tions, Inc. v. Law Offices of Curtis V. Trinko, LLP that a claim under Section 2 of the Sherman Act could not proceed against Verizon for violations that were more related to the Telecommunications Act of 1996 than to the antitrust laws.81 The Court phrased the question presented in Trinko as “whether a complaint alleging breach of the incumbent’s duty under the 1996 Act to share its network with competitors states a claim under § 2 of the Sherman Act.”82 The Court found the allegation did not constitute a legitimate antitrust claim and reversed the Second Circuit.83 While that result is reasonable, the Court’s opinion goes well beyond answering the question presented and extends Trinko’s reach to claims that could be legitimate under antitrust law. The Trinko Court stated that one key factor in deciding whether to recognize an antitrust claim against a regulated firm “is the existence of a regulatory struc- ture designed to deter and remedy anticompetitive harm” because “[w]here such a structure exists, the additional benefit to competition provided by antitrust en- forcement will tend to be small.”84 That prudential consideration for precluding antitrust claims against a regulated firm has little to do with whether the plaintiff pleaded a valid antitrust claim or whether that claim could conflict with the reg- ulatory scheme. Indeed, it suggests that even when a plaintiff does plead a cog- nizable, nonconflicting antitrust claim, courts should still preclude the claim on grounds of enforcement efficiency if a regulatory structure could address the harm. This consideration marked a clear departure from Otter Tail and Gordon, which allowed antitrust intervention even where redundant to existing regulatory authority, absent “plain repugnancy” between the two. By introducing “small additional benefit” as grounds for precluding non-conflicting antitrust claims, the Court potentially undermined the long-standing doctrine favoring antitrust as a complement to regulation. The Court clearly took a skeptical view of such complementarity by finding little benefit from antitrust unless “[t]here is nothing built into the regulatory scheme which performs the antitrust func- tion.”85 The Court thereby suggests that it would displace antitrust if the regulation contains anything that addresses competition, even if it is addressed in only a limited way. Three years after Trinko, the Court decided Credit Suisse Securities (USA) LLC v. Billing. 86 The plaintiffs in Credit Suisse claimed that the defendants violated Section 1 of the Sherman Act, which prohibits “every contract, combination . . . , or conspiracy, in restraint of trade,”87 by setting securities prices through joint conduct that went beyond what securities laws allow.88 They also alleged that the defendants had violated antitrust and securities laws by impermissibly en- gaging in tying and similar activities.89 Importantly, the Court accepted as given that the securities law did, and “inevitably” would, render defendants’ conduct unlawful, so in principle there was no conflict between the antitrust claims and the regulatory statute.90 The Court nonetheless held that even where a correctly construed antitrust claim would not actually conflict with regulation, the anti- trust claim could still be barred on potential conflict grounds.91 The Court rea- soned that “only a fine, complex, detailed line separates activity that the SEC permits or encourages (for which respondents must concede antitrust immun- ity) from activity that the SEC must (and inevitably will) forbid.”92 Therefore, the Court expanded the notion of plain repugnancy to incorporate not just the genuine conflict that arises when antitrust could bar conduct that regulation might allow, but even conflict between antitrust and regulation that could arise only from judicial mistake or confusion. Credit Suisse thus went beyond prior implied immunity cases to establish a rule that blocks some claims even when they rely on legitimate antitrust principles, are consistent with securities laws, and, correctly read, would not interfere with the applicable regulatory scheme. Where the underlying conduct is similar enough to regulated conduct that a judge might confuse the two and create a conflict with regulatory authority, the Court chose to err on the side of barring antitrust claims. The effect of Trinko and Credit Suisse was to render antitrust and regulation more like substitutes and less like complements. The competitive practices, mar- ket structure, and market performance of regulated industries are thus more likely to develop without the constraints of antitrust, reflecting instead the po- tentially different requirements and prohibitions of a regulatory agency’s com- petition-related rules. With antitrust less able to act in parallel or as a comple- ment, the enforcement of competition in regulated industries will depend on the nature of the relevant rules, the agency’s commitment to enforcement, and the kinds of sanctions the agency can impose. As agencies repeal such rules or back off from actively administering them, the resulting competition enforcement gap could be greater because antitrust has been sidelined as an available supplement or complement. The doctrinal shift in the relationship between antitrust and regulation that resulted from Trinko and Credit Suisse therefore magnifies the competition enforcement consequences of strong deregulatory cycles.

### 2NC---AT: 2---Perm do CP

#### The “core antitrust laws” means Sherman, Clayton, and FTC---the counterplan doesn’t touch those.

**FTC ND**. “The Antitrust Laws.” 2013. Federal Trade Commission. June 11, 2013. https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws.

Congress passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. With some revisions, these are the three core federal antitrust laws still in effect today.

#### More ev.

Lisa Kimmel 20, Senior Counsel at Crowell & Moring, LLP in Washington, D.C., twenty years of experience as an antitrust lawyer and holds a Ph.D. in economics from the University of California at Berkeley; and Eric Fanchiang, associate in Crowell & Moring’s Irvine, CA office and a member of the firm’s antitrust and commercial litigation groups, 2020, “Antitrust and Intellectual Property Licensing,” in 2020 Licensing Update, Wolters Kluwer Legal & Regulatory U.S., https://www.crowell.com/files/20200401-Licensing-Update-Chapter-13.pdf

U.S. antitrust law is defined by federal and state statutes, as interpreted by the courts. The core federal statutes are the Sherman Act,1 passed by Congress in 1890, and the Federal Trade Commission2 and Clayton Acts,3 both passed in 1914. The United States Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC” or “Commission”) (together the “agencies”) share enforcement of most areas of federal antitrust law but with some differences in the scope of their authority. The FTC has sole authority to enforce Section 5 of FTC Act, which prohibits (1) unfair methods of competition and (2) unfair or deceptive acts or practices. The FTC almost always pursues claims for anticompetitive conduct as unfair methods of competition and reserves charges of unfair or deceptive acts or practices for consumer protection violations. Though the FTC's authority to challenge unfair methods of competition goes beyond conduct prohibited by the Sherman and Clayton Acts, in practice the FTC brings most unfair methods of competition cases under the same standards that courts apply to Sherman Act claims. The most prominent exception is the invitation to collude offense, which falls outside the scope of the Sherman Act (if the invitation is not accepted, there is no agreement). The FTC challenges invitations to collude as so-called “standalone” violations of Section 5.4 The DOJ has sole authority to pursue criminal violations of the antitrust laws. Most states have their own state antitrust and unfair competition statutes. State law follows federal law to some extent, though as discussed below, may differ from federal law in meaningful ways that vary state to state. State attorneys general and private parties can also typically file suit to enforce both federal and state antitrust law.

#### Consensus is neg.

Sukesh 20 (Rahul Sukesh-Fordham University. “Investigating a Mega-Merger: Contextualizing the T-Mobile Merger to the Consumer Welfare Standard and the Competition Standard“ , Fordham Undergraduate Law Review, Volume 2, Article 6, 2020, <https://research.library.fordham.edu/cgi/viewcontent.cgi?article=1040&context=fulr> , date accessed 9/4/21)

As the basis for the lawsuit and pending concern against the merger between T-Mobile and Sprint cited issues of antitrust law, having a general understanding of antitrust law will shed light on the breath of the issue. In practice today, there are three core antitrust laws: the Sherman Act of 1890, and the more recent Federal Trade Commission Act (FTCA) and Clayton Act both of 1914.226 The Sherman Act and Clayton Act are more significant to the implications of this case. In detail, the Sherman Act outlaws any attempt to restrict or monopolize trade within reasonable measure. Seemingly vague, this act applies to action that would hinder competition. Added to supplement the Sherman Act, the Clayton Act “addresses specific practices… such as mergers… the Sherman Act does not clearly prohibit” that would still hinder competition.”227

#### And

Philippon 19 (Thomas Philippon is the Max L. Heine Professor of Finance at New York University, Stern School of Business. Philippon was named one of the “top 25 economists under 45” by the IMF in 2014. He has won the 2013 Bernácer Prize for Best European Economist under 40, the 2010 Michael Brennan & BlackRock Award, the 2009 Prize for Best Young French Economist, and the 2008 Brattle Prize for the best paper in Corporate Finance. “Glossary” From the book *The Great Reversal,* <https://www.degruyter.com/document/doi/10.4159/9780674243095-020/pdf> , date accessed 9/4/21)

antitrust laws: The federal and state laws that promote competition and pre-vent monopolization. In the late nineteenth century, large companies organized as “trusts” to stifle competition. Antitrust deals mainly with mergers, cartels (price-fixing), and restrictive agreements (such as tie-ins or exclusive contracts). The three core antitrust laws in the US are the Sherman Act (1890), the Federal Trade Commission Act (1914), and the Clayton Act (1914). They are usually called competition laws or anti-monopoly laws outside of the US.

### 2NC---AT: 4---Regulatory Capture

#### Expanding antitrust liability results in capture.

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Private and Pseudo-State Interests. Antitrust authorities can be captured by various outside groups that lead antitrust employees to please them so as to maximize their own future interest. 59 Public choice theorists have pointed out that special interest groups may capture regulatory authorities. 60 This issue cannot be overlooked and [\*344] a precise risk map should be drawn in this area as antitrust authorities' employees may please these groups for personal benefit, to the detriment of consumers. 61 The importance of this issue is growing as the scope of antitrust authorities is expanding, which increases the risk of regulatory capture by interest groups. 62 See, e.g., Bundeskartellamt prohibits Facebook from combining user data from different sources (Bundeskartellamt, Feb. 7, 2019), archived at https://perma.cc/B9S2-9659. For more on this extension of antitrust authorities' power, see Directive (EU) 2019/1/EU of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, 2019 O.J. L11 3 (Jan. 14, 2019). For risks this creates in terms of regulatory capture, see Michael E. DeBow, Social Costs of Populist Antitrust: A Public Choice Perspective, 14 Harv. J. L. & Pub. Pol. 205, 220 (1991) (explaining that as the government expands the scope and aims of antitrust enforcement, private parties invest more significant sums in manipulating this greater government intervention in the economy).

#### 1. Poor appointments, politicization, and overlapping authority. Their argument lacks any empirical support.

Wright 12 [Joshua D. Wright, Professor, George Mason University School of Law and Department of Economics. “DO EXPERT AGENCIES OUTPERFORM GENERALIST JUDGES? SOME PRELIMINARY EVIDENCE FROM THE FEDERAL TRADE COMMISSION,” https://www.law.gmu.edu/assets/files/publications/working\_papers/1303DoExpertAgenciesOutperform.pdf]

In the context of US antitrust law, many commentators have recently called for an expansion of the Federal Trade Commission’s (FTC’s) adjudicatory decision-making authority pursuant to Section 5 of the FTC Act, increased rulemaking, and carving out exceptions for the agency from increased burdens of production facing private plaintiffs. These claims are often expressly grounded in the assertion that expert agencies generate higher quality decisions than federal district court judges. We call this assertion the expertise hypothesis and attempt to test it. The relevant question is whether the expert inputs available to generalist federal district court judges translate to higher quality outputs and better performance than the Commission produces in its role as an adjudicatory decision-maker. While many appear to assume agencies have courts beat on this margin, to our knowledge, this oft-cited reason to increase the discretion of agencies and the deference afforded them by reviewing courts is void of empirical support. Contrary to the expertise hypothesis, we find evidence suggesting the Commission does not perform as well as generalist judges in its adjudicatory antitrust decision-making role. Furthermore, while the available evidence is more limited, there is no clear evidence the Commission adds significant incremental value to the administrative law judge decisions it reviews. In light of these findings, we conclude there is little empirical basis for the various proposals to expand agency authority and deference to agency decisions. More generally, our results highlight the need for research on the relationship between institutional design and agency expertise in the antitrust context. I have never heard anyone argue that [the FTC] has displayed superior expertise to the courts when it comes to deciding antitrust cases.1 Introduction Governments and scholars have been increasingly willing to evaluate the performance of their competition and consumer protection agencies worldwide. Within the last few years alone, China,2 India,3 Brazil,4 and the European Union5 have undergone substantial institutional restructuring aimed at improving agency performance. At the same time, antitrust scholars have recently increased their focus upon the structure of competition enforcement institutions, giving rise to a burgeoning body of scholarly work.6 One critical dimension of the institutional design research agenda is how decision-making ought to be delegated between courts and agencies to best achieve the goals of competition policy. While antitrust scholars have long focused upon the importance of errors and the design of substantive legal rules to minimize error costs, relatively little attention has been paid to the myriad ways in which institutional design in general, and decision-making within expert competition agencies specifically, can improve the quality of these institutions. The organization of leadership and staff within a competition agency affects the structure of the decision-making process it undertakes. For example, the number of economists, the quality of their inputs, and the nature of their authority within a competition agency could affect agency enforcement decisions.7 Indeed, throughout its history the Federal Trade Commission (FTC) has experimented with various organizational designs in hopes of incorporating the optimal level of economic influence to achieve the agency’s goals.8 Similarly, the European Commission (EC) has responded to calls for more coherent economic analysis through the addition of a team of PhD economists to aid the EC’s Competition Directorate in improving its decision-making quality.9 The institutional design literature has identified a number of potential factors influencing decision-making, including whether the agency should be led by a single director or a collegiate body,10 the experience held by agency heads,11 the structure of enforcement,12 and methods of ensuring transparency in agency decision-making.13 There is no debate that theoretical potential for superior agency performance lies in its ability to harness its expertise. In practice, however, there is also little doubt that the observed design and structure of competition agencies in the USA bears little resemblance to the theoretical optimum. Holding aside the obvious and oft-discussed inefficiencies of multiple overlapping competition agencies, there appear to be other fundamental structural impediments to optimal agency performance. To take but one example, former FTC Chairman William Kovacic has written at length about the disappointing overall quality of appointments of FTC commissioners.14 While Congress envisioned a Commission comprising lawyers, business managers, and economists with superior achievements and substantial, diverse experience,15 what it got was—in no small part due to political interference16—a history and pattern of appointments evidencing a systematic failure to meet those expectations.17 Obviously, this is not to say that those appointed to lead the FTC are not talented professionals; it simply means the historic composition of the Commission has failed to encompass the qualities necessary to make it the leading authority in US antitrust law.18 Predicate to the question of precisely how to design competition agencies to improve their performance is the issue of precisely what locus of authority should be allocated to the expert agency. The answer to that question lies at the heart of many antitrust debates. Dissatisfied with recent changes in Sherman Act jurisprudence, some commentators have called for a shift in responsibility for shaping antitrust law from the courts to the agencies, reasserting the original vision of the FTC as an expert agency.19 A recurring and related issue in the debate over an expanded role for enforcement agencies—especially the FTC—in antitrust decision-making is whether Article III courts are sufficiently equipped to handle complex antitrust cases.20 Evidence indicates that complex antitrust cases involve economic analysis that is sometimes too complicated for courts to consistently decide properly.21 This is due in large part to the fact that courts are unable (some suggest unwilling22) to incorporate expert economic analysis into their antitrust decisions. Some commentators have argued, based upon courts’ imperfect decision-making abilities, that the FTC should have greater decision-making authority to offset courts’ shortcomings in understanding the complex economic analysis required to accurately assess modern antitrust issues.23 Which institution is better equipped to analyse complex modern antitrust cases? The debate is occasionally framed in unfair terms. There is no doubt the agency comprises antitrust and economic experts well equipped to analyse all modes of business dealings; in this sense, agencies certainly have greater economic expertise than the Article III judges as a general rule. But neither the expert economists in the Bureau of Economics nor the Bureau of Competition’s lawyers make decisions for the agency. Both ultimately provide inputs to the five-person Commission in a complex decision-making process. Economic and legal expertise are not the only inputs. Commissioners are political appointees that may or may not begin their terms with substantial antitrust experience.24 As the ultimate decision-makers in administrative litigation, the Commission is the body to which relevant analytical information must be transmitted. Comparing the expert Commission staff to combined expertise of the Article III judge and his law clerks is not the appropriate comparison; it also misses the point.25 The issue remains whether the expert inputs available to the Commission’s decision-makers manifest themselves in the context of administrative decision-making compared to generalist judges.

#### 2. The only scholarly attempt to empirically analyze comparative expertise utterly debunks their argument.

Joshua D. Wright 12, Professor, George Mason University School of Law and Department of Economics. “DO EXPERT AGENCIES OUTPERFORM GENERALIST JUDGES? SOME PRELIMINARY EVIDENCE FROM THE FEDERAL TRADE COMMISSION,” https://www.law.gmu.edu/assets/files/publications/working\_papers/1303DoExpertAgenciesOutperform.pdf

Our goal is to provide some empirical evidence testing the expertise hypothesis, namely, that expert agency decision-making will be superior to decision-making by generalist judges. Advocates have relied upon the expertise hypothesis to justify increased delegations of power to administrative agencies and increased judicial deference to those agencies’ decisions. In the antitrust context specifically, the expertise hypothesis has provided the primary intellectual basis for arguments for aggressive and expansive use of the FTC’s Section 5 authority outside the bounds of the Sherman Act,57 agency rulemaking,58 and increased deference to FTC decisions in federal court.59 We are not aware of any empirical studies comparing the relative performance of judges and agencies; there is, however, a relatively small but growing literature focusing upon the relationship between judicial specialization and performance.60 We test the expertise hypothesis by way of comparing the adjudicatory decisions of two different sets of decision-makers. We first compare the decisions of federal district court judges and FTC Commissioners. This comparison has a number of intuitively appealing features. First, both sets of decisions are appealed to federal courts of appeals. Second, most variants of the expertise hypothesis in the competition context appear to have precisely this comparison in mind.61 Congress intended and designed the FTC to be an expert agency with specialized knowledge and resources unavailable to generalist judges; it is that expertise and specialized knowledge that Congress and proponents of the expertise hypothesis presume will increase the quality of inputs into the Commissioners’ decision-making processes and thus also increase the quality of the outputs. Third, the Commission reviews ALJ decisions de novo, and thus its own decisions, like the district courts, are not bound by prior fact-finding.62 Comparison of judicial and Commission decisions allows a fairly intuitive and direct test of the expertise hypothesis. This comparison also suffers from some important limitations. Perhaps the most important is that Commission decisions are afforded greater deference than district court decisions by federal courts of appeal on review.63 Furthermore, cases come to the Commission after a full administrative trial. While the Commission need not afford ALJ decisions significant deference, the fact that cases must go through a full trial before they can be appealed to the Commission, and perhaps ultimately to a federal court of appeals, is an important difference between the two sets of decisions. Administrative cases in which defendants are willing to incur the costs of a full administrative trial and Commission review, including the costs of delay, may be systematically more likely to contain reversible error than federal district court decisions in the sample. Our second comparison takes a different approach, ignoring federal court decisions and focusing upon differences between ALJ and Commission decisions. The intuition of this approach is to try to estimate the ‘marginal product’ of Commission decision-making. We attempt to isolate the incremental impact of Commission input into the agency decision-making relative to ALJ decision-making without Commission input. Put simply, our sample ofResults In this section, we present simple differences in means followed by probit regression analysis for each of our two comparisons. Federal Trade Commissioners versus Generalist Judges Means comparisons We begin with some simple comparisons of the means to explore the differences in the appeal rates for Commission decisions and Article III judicial decisions. Figure 1 reports the results. Aside from including the appeal rate for the Article III judges and the Commissioners, the appeal rate for the Article III judges, conditional on the plaintiff winning, is also included. In our sample, cases decided by the Commission are 14 per cent more likely to be appealed than are cases decided by Article II judges. The difference is statistically significant at the 5 per cent level. The contrast between the Commission’s appeal rate and the Article III judges’ appeal rate conditional on the plaintiff winning the Article III case is greater and more statistically significant than the unconditional comparison. Commission decisions are 27 per cent more likely to be appealed than are the conditional cases by the Article III judges. The difference is statistically significant at the 1 per cent level and, in practical terms, quite large. The parties involved in FTC litigation are 25 per cent more likely to be disgruntled enough to appeal their case to the circuit court of appeals. Figure 2 compares Commission appeal rates with those of Article III judges with basic economic training. LEC-trained judges’ opinions are appealed at arate 5 percentage points lower than the decisions of their untrained Article III colleagues and a full 19 percentage points less frequently than those of the Commission. This difference is statistically significant at the 1 per cent level. One important difference between Commission decisions and decisions authored by district court judges is that, as discussed above, the Commission’s de novo review takes place after a full administrative trial in front an ALJ. Thus, it might be the case that different stages of factual development drive differences in appeal rates. For a preliminary examination of this possibility, reports appeal rates of Commissioners and Article III judges in antitrust cases conditioned upon limiting the judicial sample to decisions at or after the summary judgment stage. Judicial appeal rates are only 8 percentage points lower than the Commission’s, and the difference is not statistically significant. While we prefer comparisons based upon appeals rather than reversals, we note that we obtain similar, though less drastic, results when we use reversals. Figure 4 shows that Commission opinions are reversed 20 per cent of the time and decisions by Article III judges are reversed only 5 per cent of the time. The Article III judges’ reversal rate is nearly identical to a subset of Article III judge decisions conditional on the plaintiff winning at trial. This 15 per cent point difference is statistically significant at the 1 per cent level. Figures 5 and 6 report comparative reversal rates when we condition judicial reversal rates on economic training and decisions at or after the summary judgment stage. The differences remain stable at approximately 15 per cent; judicial reversal rates are substantially lower, providing some preliminary evidence contrary to the expertise hypothesis. The difference is statistically significant at the 1 per cent level. These means comparisons provide preliminary evidence suggesting the Commission’s decisions are more likely to be appealed and reversed than those of Article III generalist judges. Taken at face value, the comparison implies that on this particular margin of performance—adjudicatory decision-making— Commissioners do not perform as well as district court generalists. However, these differences in appeal and reversal rates may be the result of omitted variables or sample selection. In the next section, we use a probit regression framework to control for other factors that may reasonably influence the appeal and reversal rates of the Commission and Article III judges.

### 2NC---AT: 5---Must be Broad Rule

#### Regulation more effectively addresses market failures

Maiorano 21, Senior Competition Expert with the Competition Division of the OECD (Frederica, “Working Party No. 2 on Competition and Regulation Competition Enforcement and Regulatory Alternatives – Note by the United States,” *OECD*, <https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2/WD(2021)12&docLanguage=En>)

Regulation can be appropriate, however, where legitimate market failures impede competitive markets.

Start FN 3

Regulation may also be justified to pursue outcomes unrelated to competition (e.g., rural access to electricity or telecommunication services).

End FN 3

In some instances, an expert regulatory agency with adequate knowledge and resources may be better suited to address durable structural concerns, e.g., by monitoring and limiting the exercise of market power or enforcing market access conditions on an ongoing basis.

Start FN 4

For example, the Federal Energy Regulatory Commission (FERC) seeks to ensure just and reasonable rates, terms, and conditions for the wholesale sale and transmission of electricity and natural gas in interstate commerce. It utilizes a range of ratemaking activities as well as market oversight and enforcement in regulating those services.

End FN 4

A regulatory authority may be able successfully to promulgate narrow, industry-specific rules to address market failures in a quasi-legislative procedure with public comments. Even where regulation is needed, however, regulators should beware of unintended consequences to ensure that regulation to address a demonstrated market failure does not unduly restrict competition.

#### Counterplan is more durable and enforceable

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)---sex edited

Regulation can also be comparatively slow to adapt to new market condi- tions, and that delay can affect an entire regulated industry.122 Antitrust authorities also might fail to foresee relevant market changes, but their actions typically affect only one discrete case and they generally have flexibility, as conditions change, to modify relevant consent decrees and decline to pursue similar investigations or sanctions.123 It is harder for government agencies to make changes to established regulatory programs,124 making regulation more likely than anti- trust to outlast the problems it was implemented to solve. Regulation’s delayed adaptation to changing conditions can be costly,125 especially as markets transi- tion to more competitive structures.126 As Michael Boudin, a former DOJ anti- trust official (and later federal judge) put it, “regulation almost always will be very difficult to dislodge, even if it proves mistaken. Almost any regulatory regime will develop a constituency, armed with congress[people] and self-interested bureaucrats . . . [and] become[] the foundation on which private arrangements are constructed, arrangements that cannot easily be discarded.”127

### 2NC---AT: 6---Uncertainty

#### Regulation doesn’t tradeoff with innovation

Plumer 10 (Bradford, “How Regulation Can Be Good For Innovation,” The New Republic, <https://newrepublic.com/article/76328/regulation-good-innovation>)

Steven Pearlstein has a good column in The Washington Post today about how smart government regulation can actually foster technological innovation. It's a useful counterpoint to conservative claims that a cap on carbon emissions will crush the economy and shunt us back to the Dark Ages: It's been 20 years since Harvard Business School professor Michael Porter provided scholarly support for the notion that, rather than hamper economic growth and competitiveness, well-crafted regulation could actually promote it. ... His studies of specific industries also turned up numerous examples of new products and more efficient ways of doing business that came about only because companies and industries were forced to comply with rules. Porter's musings, introduced in an article in Scientific American, have since spawned a cottage industry of researchers intent on proving or disproving his hypothesis. Its most controversial aspect was to suggest that profit-maximizing companies were ignoring opportunities to produce profitable new products or adopt more-efficient production techniques. ... But subsequent research confirmed what some of us have long since discovered—namely that corporate executives can be stuck in their ways, averse to risk and unwilling to sacrifice short-term profitability for long-term gain. And as a result of these market "imperfections," sometimes a new regulation comes along that spurs innovation by forcing companies to look at things in new ways. That doesn't mean that regulation is costless, but it does suggest that, on an economy-wide basis, those costs can be offset by subsequent investment and innovation.

#### If there is a negative effect, it’s not on breakthrough innovation

Aghion 21, French economist who is a Professor at College de France, at INSEAD, and at the London School of Economics. He is also teaching at the Paris School of Economics. Philippe Aghion was formerly the Robert C. Waggoner Professor of Economics at Harvard University (Philippe, et al, “The Impact of Regulation on Innovation,” <https://www.nber.org/papers/w28381>)

Does regulation affect the pace and nature of innovation and if so, by how much? We build a tractable and quantifiable endogenous growth model with size-contingent regulations. We apply this to population administrative firm panel data from France, where many labor regulations apply to firms with 50 or more employees. Nonparametrically, we find that there is a sharp fall in the fraction of innovating firms just to the left of the regulatory threshold. Further, a dynamic analysis shows a sharp reduction in the firm’s innovation response to exogenous demand shocks for firms just below the regulatory threshold. We then quantitatively fit the parameters of the model to the data, finding that innovation at the macro level is about 5.4% lower due to the regulation, a 2.2% consumption equivalent welfare loss. Four-fifths of this loss is due to lower innovation intensity per firm rather than just a misallocation towards smaller firms and lower entry. We generalize the theory to allow for changes in the direction of R&D, and find that regulation’s negative effects only matter for incremental innovation (as measured by citations and text-based measures of novelty). A more regulated economy may have less innovation, but when firms do innovate they tend to “swing for the fence” with more radical (and labor saving) breakthroughs.

#### Antitrust is useless versus most digital concerns

Wheeler 20, was the 31st Chairman of the Federal Communications Commission (FCC) from 2013 to 2017. He is presently a Senior Fellow at the Shorenstein Center at Harvard Kennedy School and a Visiting Fellow at the Brookings Institution (Tom, et al, “New Digital Realities; New Oversight Solutions in the U.S.,” https://shorensteincenter.org/wp-content/uploads/2020/08/New-Digital-Realities\_August-2020.pdf)

Second, involving remedy. Even if there were major adjustments in the proper reach of the antitrust laws, many of the concerns presented by the largest digital platforms would fall outside of plausible antitrust-based enforcement and remediation. Many of the negative externalities that are inherent in the platforms’ business models lie outside of the reach of antitrust unless it were to produce large increases in competition accompanied by very large increases in the variety of offerings. It’s not realistic to expect antitrust to have an important influence on privacy, data security, hate speech, imminent incitements to violence, malign foreign influence, or misinformation. Amelioration of these and other similar problems will have to come, if at all, from other sources, especially if they are to be dealt with in anything like the near-term.26 But even more limited aspirations addressing only narrowly defined economic issues present very serious challenges with respect to remedies. This is where the learning surrounding the essential facilities doctrine is instructive.

#### Regulatory fixes are comparatively better

Wheeler 20, was the 31st Chairman of the Federal Communications Commission (FCC) from 2013 to 2017. He is presently a Senior Fellow at the Shorenstein Center at Harvard Kennedy School and a Visiting Fellow at the Brookings Institution (Tom, et al, “New Digital Realities; New Oversight Solutions in the U.S.,” <https://shorensteincenter.org/wp-content/uploads/2020/08/New-Digital-Realities_August-2020.pdf>)

As the preceding discussion indicates, it would be a serious mistake to rely on antitrust enforcement as the sole mechanism for securing our society’s interest in the workings of the ever more critical digital platforms. Taken alone, the antitrust laws are not likely to produce a satisfactory response to perceived requirements for additional social controls applicable to the major digital platforms. The cases take too long to litigate, the outcomes inevitably are uncertain, and the remedial possibilities—whether structural or behavioral—will be complex. This assessment changes, however, in the presence of a specialized regulatory agency. Given proper authority, a specialized agency would be able to regulate non-discrimination, access to data sets, interoperation, and similar requirements designed to lower barriers to competition with the major platforms, whether judicially imposed or agency imposed. The contingent and protracted nature of antitrust litigation would remain as obstacles to its utility as a sole source of social control, but the remedial complications could be ameliorated very substantially. As is apparent, however, the better course involves empowering a new, specialized agency to address in practical and timely fashion both the symptoms and the causes of platform-related problems that require remediation. The agency’s statutory mandate should take care not to displace the antitrust laws explicitly or by implication. Rather, the agency should be given powers that supplement and complement the Justice Department’s and the Federal Trade Commission’s competition and consumer protection mandates.

### 2NC---AT: 7---Extraterritoriality Deficit

#### Regulations have extraterritorial scope. One example is enough because their ev is descriptive of political will, not legal authority, and durable fiat solves.

Carol Goforth 21, law professor at the University of Arkansas, specializes in securities law, 2021, https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/

In 2008, the world ushered in the blockchain era[[1]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/" \l "_ftn1) with a whitepaper posted pseudonymously in an online discussion of cryptography under the name “Satoshi Nakamoto.”[[2]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn2) That paper formed the foundation for Bitcoin, the first blockchain-hosted cryptoasset,[[3]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn3) a new substitute for conventional government-backed currency that was designed to be “secure, international and fungible,” and free from the control of any government or other central authority.[[4]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn4) Today, there are more than 9,000 different cryptoassets with a total market capitalization that has exceeded $2 trillion,[[5]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn5) and we are long past the wild, wild west of unregulated crypto activity. Governments around the world have sought to regulate this new asset class, with the U.S. Securities and Exchange Commission (SEC) being by far the most active regulator.[[6]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn6)

In one of its most significant enforcement actions, in 2019 the SEC initiated a complaint against Telegram Group Inc. and Ton Issuer Inc.,[[7]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn7) referred to in this post simply as Telegram. Telegram, a popular global, cloud-based instant messaging, videotelephone, and voice over service company, had planned to raise capital in two stages. The first stage, lasting from January to March of 2018, involved the sale of contractual rights to acquire cryptoassets to be developed to 171 initial purchasers, including 39 U.S. investors, for $1.7 billion. These sales were designed to be exempt from the U.S. securities registration requirements pursuant to the terms of Rule 506(c) of Regulation D.[[8]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn8)

The second stage called for Telegram to issue the new cryptoasset, called Grams, both to the original purchasers and to members of the public worldwide. This phase was scheduled to occur no later than October 31, 2019, approximately 18 months after the end of the first phase. Because the plan was to have a fully functional blockchain and tokens before this occurred, the position taken by Telegram was that at that point, the Grams would not be securities and instead would be a currency or commodity.[[9]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn9)

The SEC’s enforcement action was initiated shortly before the Grams were to be delivered in October 2019, and on March 24, 2020, the court granted the SEC’s request for a preliminary injunction, halting the proposed sale of Grams on the grounds that Telegram sought to introduce a security into the public market without registration.[[10]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn10) There were no allegations of fraud or other wrongdoing aside from the failure to register the offering, and the fact that wealthy, sophisticated investors had been willing to back the development of Grams to the tune of $1.7 billion. Telegram promptly asked for the trial judge to limit the scope of the order to U.S. purchasers, but on April 1, 2020, U.S. District Judge P. Kevin Castel, after castigating Telegram for failing to raise the issue earlier, refused to limit his ruling, deciding instead that there was a substantial risk of resales to U.S. citizens.[[11]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn11) Telegram thereafter abandoned its plans and any right to appeal, agreeing to return $1.2 billion to investors worldwide and to pay a fine of $18.5 million to the SEC.[[12]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn12)

The global reach of the *Telegram* opinion may surprise some, but the SEC’s mandate to protect U.S. markets and investors is broad. While there is a presumption against extraterritorial application of U.S. laws such as the registration requirement of the federal securities laws, Congress can mandate a broader response. As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”),[[13]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn13) Congress gave federal courts “jurisdiction” over claims by the SEC or the United States involving “(1) conduct within the United States that constitutes significant steps in furtherance of [a] violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”[[14]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn14)

It is not clear, however, if this language was intended to expand the reach of the federal securities laws or merely to give the federal courts jurisdiction when such claims were brought. A U.S. Supreme Court case decided just before Dodd-Frank was enacted held that the anti-fraud provisions of federal securities laws should apply only if the claimed violation is within the “focus” of the “objects of the statute’s solicitude.”[[15]](https://clsbluesky.law.columbia.edu/2021/04/27/extraterritorial-reach-of-u-s-crypto-regulation-by-the-sec/#_ftn15) There are plenty of valid reasons for this limitation on the extraterritorial application of U.S. law.

#### International antitrust enforcement is practically impossible, even if legal authority exists.

Spencer Weber Waller 2000, Professor of Law, Brooklyn Law School, 2000, “Can U.S. Antitrust Laws Open International Markets?” https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1506&context=njilb

A foreign cartel seeking to pressure or coerce customers into refraining from purchasing United States products would be equally amenable to antitrust scrutiny. Such activity would probably constitute a classic group boycott by competitors seeking to deprive actual or potential rivals from access to the market.3 3 Here, the problems of antitrust enforcement are more prac- tical than theoretical or legal in nature.34 In such circumstances, foreign firms are seeking to protect their own markets from external competition. In many such instances, the foreign firms do not export to the United States nor do business in the United States. They merely are seeking to protect their own domestic market, often a static or declining market, and may not be subject to personal jurisdiction, jurisdiction to prescribe, or any meaningful relief in the United States.35

#### International markets are practically beyond the scope of US antitrust.

Spencer Weber Waller 2000, Professor of Law, Brooklyn Law School, 2000, “Can U.S. Antitrust Laws Open International Markets?” https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1506&context=njilb

In the international arena, antitrust law would be limited in the same manner, but for different reasons. International law, respect for the sovereign status of our trading partners, and the need for successful diplomatic relations with both friends and foes, means that U.S. antitrust law rarely will be applied directly to the actions of foreign governments or the private firms which persuaded the foreign government to take such anticompetitive action.95 Accepting the Sherman Act as being limited to private restraints means that the public acts and policies of foreign governments were no more intended to be reached by Congress in passing the antitrust laws than those acts when performed by state or local governments in the United States. Thus, many of the barriers to market access which derive from foreign governmental laws, practices, pressure, or lobbying may formally or practically be beyond the scope of U.S. antitrust enforcement. These are precisely the type of trade barriers which have been the subject of action under section 301 and bilateral and multilateral trade negotiations. But antitrust hardly adds another weapon to deal with these governmental barriers.

## APA DA

### 2NC---UQ

#### Courts are employing a strict notice-and-comment doctrine, broadly striking down violations.

Lipton ’17 (Eric; 10/6/17; Washington-based correspondent for The New York Times, where he writes about government relations, corporate agendas and Congress; The New York Times; “Courts Thwart Administration’s Effort to Rescind Obama-Era Environmental Regulations”; <https://www.nytimes.com/2017/10/06/climate/trump-administration-environmental-regulations.html>; DT)

WASHINGTON — The **rapid-fire push** by the Trump administration to wipe out significant chunks of the Obama environmental legacy is running into a not-so-minor complication: **Judges keep ruling** that the Trump team is **violating federal law**. The latest such ruling came late Wednesday, when a federal magistrate judge in Northern California vacated a move by the Department of Interior to delay compliance with rules curbing so-called flaring, a technique oil and gas companies use to burn off leaking methane. Flaring is blamed for contributing to climate change as well as lost tax revenues because the drilling is being done on federal land. It was the third time since July that the Environmental Protection Agency or the Interior Department has been found to have acted illegally in their rush to roll back environmental rules. And in **three other** environmental **cases**, the Trump administration **reversed course** on its own after lawsuits **accusing it of illegal actions** were filed by environmental groups and Democratic state attorneys general. The legal reversals reflect **how aggressively** Mr. **Trump’s critics are challenging** the administration’s **efforts to rescind regulations** enacted during the Obama administration, not only related to the environment, but to immigration, to consumer protection and to other areas. Yet even as **the list of failed** or at least stalled **rollbacks continues to grow**, the Trump administration, in many other cases, continues to move ahead with its agenda, often trying a number of different approaches to killing the same rule, so that early setbacks do not necessarily mean anything has been settled. “The Trump administration is confident in its legal positions and looks forward to arguing — and winning — before the federal judiciary,” Kelly Love, a White House spokeswoman, said in a statement. “This is in stark contrast to the previous administration, which may be the worst win rate before the Supreme Court since the Taylor administration in the early 1850s.” Still, the string of court rulings and administrative reversals — even some conservative legal scholars agree — is a sign that the Trump administration has been in such a rush to undo the Obama legacy that it is almost **inviting legal challenges**. “If I were in this administration, this should be seen as a **warning sign**,” said Jonathan H. Adler, the director of the Center for Business Law & Regulation at Case Western Reserve University School of Law. “The message is clear: Guys, we have a problem here. We are trying to do stuff that is hard and we are not crossing our i’s and t’s.” Environmentalists see it as proof that Mr. Trump and his team care **little about honoring federal law**. “It shows **serial lawbreaking** and **sloppiness** by a Trump administration bent on rollbacks,” said John Walke, the director of the clean air project at the Natural Resources Defense Council. “It is sad **they have to have their comeuppance in courts** rather than doing what was right.” But this is hardly the first administration to have administrative decisions overturned as a result of court challenges. Environmentalists challenging the moves by George W. Bush to loosen air pollution rules won 27 court rulings during his eight-year tenure. And the Obama administration itself was repeatedly challenged by environmentalists. In a recent decision related to two billion tons in coal leases on federal land in the Powder River Basin of Wyoming, for example, the United States Court of Appeals for the 10th Circuit concluded that the Democratic administration’s decision to approve the leases was “arbitrary or capricious” because it did not adequately consider the effect mining all this coal would have on climate change. But even within the White House, there is awareness that the agencies need to be more careful to avoid further stumbles. “There are concerns,” Neomi Rao, the head of the Office of Management and Budget division that oversees major federal rules, said in an interview this summer, shortly after she assumed her post. “Agencies want to move quickly to get things done.” Policy experts say the reversals also underscore the fact that crucial positions within the E.P.A. and the Interior Department remain unfilled, and that a lack of trust exists between political appointees and career staff members. “The career people at E.P.A. and D.O.J. are top-notch lawyers,” said Richard J. Lazarus, an environmental law professor at Harvard University. “But you have political people come in, and they don’t trust them at all and try to do it without them.” Xavier Becerra, the attorney general of California, who has been perhaps the most aggressive of the state officials suing to challenge Trump administration rollbacks, said he hopes the White House is getting the message. “No man, no woman is above the law,” Mr. Becerra said in an interview, shortly after the California magistrate judge ruled that the Interior Department had illegally postponed the enforcement of the methane flaring rule. “You have to follow the rule of law. It makes no difference if you are in the White House or not.” Each of the rules at the center of these legal challenges has major public implications. The Department of Interior methane rule reinstated by a federal court on Wednesday will annually eliminate the equivalent of greenhouse gas emissions from about 950,000 vehicles, according to an Obama administration estimate, while also generating millions of dollars in extra federal revenues because oil and gas companies right now do not pay royalties on methane they flare off in giant torches that light the sky. But the Interior Department, under new leadership, argued that these environmental benefits were not worth the costs. “Small independent oil and gas producers in states like North Dakota, Colorado and New Mexico, which account for a substantial portion of our nation’s energy wealth, could be hit the hardest,” Katharine MacGregor, a senior Interior Department official, said in a statement this spring. The federal court judges were not impressed by the legal arguments the Interior Department and E.P.A. made as they separately moved to repeal the Obama-era rules related to methane, which is considered a major factor in climate change. Efforts by Scott Pruitt, the E.P.A. administrator, to postpone his agency’s methane rule were “unlawful,” “arbitrary” and “capricious,” a three-judge panel said in July. “Agencies obviously have broad discretion to reconsider a regulation at any time,” the judges ruled. “To do so, however, they must comply with the Administrative Procedure Act (APA), including its requirements for notice and comment.” There are signs that the Trump administration is hearing this message. As in three other recent cases, the administration has given up efforts to roll back rules after lawsuits were filed to challenge them even before any judges had ruled on the merits of the arguments.

#### Hundreds of cases prove.

Hemel ’17 (Daniel; 9/5/17; Assistant Professor of Law at the University of Chicago Law School, graduated summa cum laude from Harvard College and received an M.Phil with distinction from Oxford University, where he was a Marshall Scholar, earned his J.D. from Yale Law School, where he was editor-in-chief of the Yale Law Journal, was a law clerk to Associate Justice Elena Kagan on the U.S. Supreme Court, clerked for Judge Michael Boudin on the U.S. Court of Appeals for the First Circuit and Judge Sri Srinivasan on the U.S. Court of Appeals for the District of Columbia Circuit, and served as visiting counsel at the Joint Committee on Taxation; POLITICO; “The Legal Flaw With Ditching DACA”; <https://www.politico.com/magazine/story/2017/09/05/the-legal-flaw-with-ditching-daca-215579>; DT)

In **hundreds of cases**, the federal courts have had to decide what counts as a “substantive rule” to which the notice-and-comment requirement applies. In a nutshell, a substantive rule is an agency action that **alters** the rights or **interests of parties**, **changes the** background **regulatory regime** and has a **present and binding effect**. Sometimes, agencies will take actions that do all of these things but are labeled as “policy statements” rather than “substantive rules.” In those cases, federal courts will **block the agency from carrying through** on its policy until it goes through the notice-and-comment process.

#### 5. Court challenge---expansive rulemaking gets challenged on non-delegation grounds---requiring the FTC to defend against a hostile SCOTUS.

Helgi Walker 21, partner in Gibson, Dunn & Crutcher's Washington, D.C. office, JD from the University of Virginia, 7/9/2021, “President Signs Executive Order Directing Agencies to Address Wide Range of Businesses’ Competitive Practices, Including Non-Compete Agreements,” https://www.gibsondunn.com/president-signs-executive-order-directing-agencies-to-address-wide-range-of-businesses-competitive-practices-including-non-compete-agreements/

Expansive rulemaking could also expose the FTC to legal challenges under the constitutional “nondelegation doctrine,” which limits the extent to which Congress may delegate lawmaking power to administrative agencies.  Although the nondelegation doctrine has seldom been invoked by the Supreme Court since the New Deal Era, in 2019 five Supreme Court justices expressed interest in reviving the doctrine.[[7]](https://www.gibsondunn.com/president-signs-executive-order-directing-agencies-to-address-wide-range-of-businesses-competitive-practices-including-non-compete-agreements/" \l "_ftn6)  Those five justices constitute a majority of the current Supreme Court.  The FTC Act, which delegates to the FTC the authority to regulate “unfair” behavior, may be susceptible to a challenge on the grounds that Congress must provide concrete guidance to cabin the FTC’s exercise of its delegated power.

## Advantage 2

### 2NC---!D---LIO

#### Liberal norms don’t shape international politics.

Staniland 18, Associate Professor of Political Science and Chair of the Committee on International Relations at the University of Chicago. (Paul, 7/29/18, “Misreading the “Liberal Order”: Why We Need New Thinking in American Foreign Policy”, *Lawfare*; https://www.lawfareblog.com/misreading-liberal-order-why-we-need-new-thinking-american-foreign-policy)

Second, the liberal order in its idealized form had very limited reach into what are now pivotal areas of U.S. security policy: Asia, the Middle East, and the “developing world” more broadly. The core of the liberal order remains transatlantic, but Asia is now growing dramatically in wealth and military power. What is the record of the order in the region? There was certainly some democracy promotion when authoritarian regimes began to totter, but there was also deep, sustained cooperation with dictators like Suharto and Ferdinand Marcos; while there are some regional institutions (such as ASEAN), they are comparatively weak; while there are some rules, they have been deeply contested. Close U.S. allies like Japan, Taiwan, and South Korea (the latter two experiencing long bouts of U.S.-allied autocracy) were not integrated into a broad alliance pact like NATO. India and Pakistan were never part of the core order, and China was only very partially integrated (primarily into the economic pillar of the order, and through ad hoc security cooperation from the 1970s). Southeast Asia has been a site of warfare and authoritarianism for much of its post-1945 history.

The United States has long considered the Middle East vital to its security, but the extent to which the United States should invest its own blood and treasure in protecting the area was always up for debate. It was only in the 1970s that the United States decided it was prepared to use force to defend the region; “dual containment” in the 1990s was always controversial, while the invasion of Iraq and its chaotic aftermath revealed deep fissures over how much presence was enough. Meanwhile, liberalism, democracy, human rights, and international institutions have not made much of a mark in the region. Jake Sullivan, in a rather odd defense of the order, suggests that “Middle Eastern instability has been a feature, not a bug, of the system.” This is not reassuring about the order’s ability to structure politics in the area. The same can be said about the order’s history in Africa, with deep Western involvement in civil wars, support for authoritarian regimes, and often-counterproductive demands for economic liberalization contributing to ongoing instability.

The legacy of the “liberal order” is both far more complex and shallower outside of the north Atlantic core than within it. Invocations of the order are seen with greater cynicism and suspicion in these areas than in Washington or Berlin. Yet they are precisely the regions that are increasingly the focus of U.S. security policy.

#### LIO’s too abstract and inconsistent to explain anything.

Staniland 18, Associate Professor of Political Science and Chair of the Committee on International Relations at the University of Chicago. (Paul, 7/29/18, “Misreading the “Liberal Order”: Why We Need New Thinking in American Foreign Policy”, *Lawfare*; https://www.lawfareblog.com/misreading-liberal-order-why-we-need-new-thinking-american-foreign-policy)

Finally, and as the preceding already suggests, the idea of “liberal order” is itself frequently too vague a concept, and was too incomplete a phenomenon, to offer guidance on a number of key contemporary questions. Allison goes so far as to call it “conceptual Jell-o.” The extremely abstract principles that experts use to define the order are confronted with a reality of extreme historical variation. This amorphousness undermines its usefulness as an actual guide to future foreign policy.

U.S. alliances in Western Europe since World War II looked dramatically different than those in East Asia. Both have achieved their basic goals, so which should be the model for the future? The United States often applied pressure to coerce its allies into adopting economic and security policies conducive to U.S. interests—going so far as to threaten abandonment of close European allies—even as it simultaneously built key elements of the liberal order. The core of the liberal order was a more tenuous and contested political space than we often remember.

This inconsistency applies to involvement in the domestic politics of other states. The United States has regularly embraced authoritarian leaders (and distanced itself from democratic regimes), while at other times it has helped to push these leaders out in the face of domestic mobilization. Advocates of the order tend to stress the latter and dismiss the former as aberrant, but both strategies contributed to the ultimate victory of the liberal order over the Soviet bloc.

The order’s history offers support for aggressively promoting democracy, accepting democratization when it emerges, and strongly supporting friendly dictators. This makes it unhelpful for grappling with the question of whether and how to promote democracy. The same is true of military interventions and covert operations abroad. U.S. leaders invested heavily in Cold War proxy wars and the overthrow of foreign regimes, while at other times and places they avoided such interventions.

This history carries important implications for addressing today’s policy challenges. Simply appealing to the order does not, for instance, tell us much about how to deal with a rising China: Since the liberal order included highly institutionalized alliances, loose “hub-and-spoke” arrangements, and coalitions of the willing, and was characterized by both preventive wars and containment, it is extremely unclear what the order suggests for America’s China strategy. While “rules-based” order is a term in vogue, it doesn’t tell us what the rules should actually be, or how they should be decided.

Nor does appealing to the liberal order help us understand whether the United States needs to be deeply involved or largely absent from the Middle East, or somewhere in between. Under the order, democracy promotion and assertive liberal intervention sometimes occurred, but so too did restraint and an acceptance of autocracy. There are no answers in the liberal international order for navigating the enormously difficult terrain of the contemporary Middle East.

### !D---LIO---Norms/Coop

#### The international order doesn’t solve war or coop.

Mearsheimer ’18 (John; is the R. Wendell Harrison Distinguished Service Professor of Political Science and the co-director of the Program on International Security Policy at the University of Chicago, where he has taught since 1982. PhD from Cornell, research fellow at the Brookings Institution, post-doctoral fellow at Harvard University's Center for International Affairs, and the Whitney H. Shepardson Fellow at the Council on Foreign Relations in New York; *The Great Delusion: Liberal Dreams and International Realities*; Yale University Press © 2018; MSCOTT)

Liberal Institutionalism

Liberal institutionalism is probably the weakest of the three major liberal theories.65 Its chief proponents make modest claims about what international institutions can actually do to bring peace, and the historical record shows clearly that for any great power on the road to war, they are little more than a speed bump. That includes liberal democracies like Britain and the United States.

Institutions are the set of rules that describe how states should cooperate and compete with each other. They prescribe acceptable forms of behavior and proscribe unacceptable behavior. The rules are negotiated by states; they are not imposed. The great powers dominate the writing of these rules and pledge to obey them, even where they think it is not in their interest to do so. In effect, countries voluntarily tie their hands when they join an international institution. The rules are typically formalized in international agreements and administered by organizations with their own personnel and budgets. It is important to emphasize, however, that those organizations per se do not compel states to obey the rules. International institutions are not powerful bodies, which are independent of the states that comprise the system, and they are not capable of forcing states to follow the rules. They are not a form of world government. States themselves must choose to obey the rules they created. Institutions, in short, call for the “decentralized cooperation of individual sovereign states, without any effective mechanism of command.”66

This emphasis on voluntary obedience also captures how international law works, which tells us there is no meaningful difference between institutions and law at the international level. International institutions are sometimes called “regimes,” and many scholars use those terms interchangeably. Thus the analysis here is as applicable to international law and regimes as it is to international institutions.67

The Ultimate Goal: Cooperation among States

Liberal institutionalists rarely argue that international institutions are a powerful force for peace. Instead, they make the less ambitious claim that institutions help settle disputes peacefully by promoting interstate cooperation. This emphasis on cooperation is clearly evident in Robert Keohane’s After Hegemony: Cooperation and Discord in the World Political Economy, probably the most influential work on international institutions.68 But as his title indicates, Keohane concentrates on explaining how to enhance economic cooperation among states. He says little about war and peace. Some liberal institutionalists do deal directly with security issues, but they too mainly talk about how those security institutions enhance cooperation.69 This focus on cooperation is found throughout the institutionalist literature, where many of the key pieces have “cooperation” in the title, and where hardly anyone elaborates on how cooperation causes peace.70

It is important to specify the particular circumstances in which institutions foster cooperation. They work only when states have mutual interests but cannot realize them because the structure of the situation gives them incentives to take advantage of each other. An example of this problem is the classic prisoner’s dilemma, where two individuals have a vested interest in cooperating but cannot because each fears the other might take advantage of him. Instead, they try to exploit each other, which leaves them both worse off than if they had made the deal. Collective action logic is another instance where individuals have common interests but do not realize them because there are powerful incentives for them to take advantage of each other. Institutions, the argument goes, can help individuals in these situations realize their common interests.

The theory has little relevance when states have conflicting interests and neither side thinks it has much to gain from cooperation. In these circumstances, states will almost certainly aim to take advantage of each other, and that will sometimes involve violence. In other words, if the differences are profound and involve important issues, countries will think in terms of winning and losing, which will invariably lead to intense security competition and sometimes war. International institutions have little influence on state behavior in such conditions, mainly because the theory does not address how institutions can resolve or even ameliorate deep conflicts between great powers.71 It is thus not surprising that liberal institutionalists have little to say about the causes of war and peace.

There is another way to show the limits of institutions. Some liberal institutionalists argue that international politics can be divided into two realms—political economy and security—and that their theory applies mainly to the former. Charles Lipson, for instance, writes that “significantly different institutional arrangements are associated with international economic and security issues.”72 Moreover, the likelihood of cooperation in these realms is markedly different. When economic relations are at stake, “cooperation can be sustained among several self-interested states,” whereas the prospects for cooperation are “more impoverished . . . in security affairs.”73

The same thinking is reflected in Keohane’s After Hegemony, where he emphasizes that he is concentrating “on relations among the advanced market-economy countries . . . the area where common interests are greatest and where the benefits of international cooperation may be easiest to realize.”74 One example of this important distinction is the contrast between the United Nations’ ineffectiveness at resolving political disputes between the great powers and the effectiveness of the International Monetary Fund and the World Bank at facilitating economic cooperation among the major powers. What this means in practice is that liberal institutionalists focus mainly on fostering cooperation in the economic and environmental realms, because those are the domains where states are most likely to need the help of institutions to realize their common interests. Liberal institutionalists devote much less attention to security regimes.

One might argue that military alliances are security institutions, and they certainly have an important effect on international politics. There is no question that alliances are useful for coordinating the actions of the member states in both peace and war, which makes their collective efforts more efficient and effective. NATO is a case in point. It was hugely important during the Cold War in helping the West deter Soviet ambitions in Europe. But the alliance was among states with powerful incentives to cooperate in the face of a common threat, not states that had fundamental disagreements. Thus the general point stands: liberal institutionalists pay little attention to questions about war and peace.

Some might say that John Ikenberry, probably the most prominent liberal institutionalist besides Keohane, is an exception. He has developed a theory that is truly international in scope and can explain how to achieve cooperation in both the economic and security realms. In his seminal book After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars, he explains the circumstances under which states can build international orders, which seems to imply an order that covers the entire globe.75 Ikenberry is particularly interested in the international order that came into being after World War II, for which the United States was principally responsible. That order, of course, was heavily institutionalized.

On close inspection, however, we see that Ikenberry’s story is all about the Cold War order within the West, where the major countries had few profound disputes. He pays little attention to the security competition between the United States and the Soviet Union. Nor does he say much about the United Nations—a truly international institution, but almost useless for managing superpower relations. In the end, Ikenberry is not dealing with international order; he is dealing with economic and military relations among the advanced industrial countries of the West. His focus is similar to Keohane’s in After Hegemony, and although they offer somewhat different theories, neither explains what causes security competition and war or how institutions prevent rival great powers from fighting each other.

The Anarchy Problem

It might seem surprising, but the major liberal institutionalist thinkers do not claim, at least most of the time, to be offering a clear alternative to realism. They seem to want to retain significant elements of realpolitik in their arguments while yet going beyond it. Ikenberry, for example, writes that his theory “draws upon both realist and liberal theoretical traditions,” while Keohane writes that “we need to go beyond Realism, not discard it.”76 Helga Haftendorn, Keohane, and Celeste Wallander, the editors of a book dealing directly with security institutions, write: “As we see it, security studies, still dominated by realist thinking, will greatly benefit by incorporating institutionalist approaches.”77 It is hard to understand how any theory that is based in good part on realist logic can possibly leave balance-of-power politics behind. But let us put that matter aside and instead concentrate on explaining why international institutions hold out little hope of significantly enhancing the prospects for peace, even if they enhance the prospects for cooperation.

Liberal institutionalism is predicated on the belief that the main inhibitor of international cooperation is the threat of cheating, which is largely a consequence of intractable uncertainty. A state can never know what other states will think and do in the future. Institutions, so the argument goes, can ameliorate that problem in four ways.

First, they can increase the number of transactions among countries over time. This iteration raises the cost of cheating by creating the prospect of future gains through cooperation. The “shadow of the future” deters cheating today, since a state caught cheating jeopardizes its prospects of benefiting from future cooperation. Iteration gives the victim the opportunity to retaliate against the cheater: it facilitates a tit-for-tat strategy, which works to prevent cheaters from getting away with their transgression. In addition to punishing states that gain a reputation for cheating, it also rewards those that develop a reputation for adherence to agreements.

Second, rules can tie together interactions between states in different issue areas. The aim of issue linkage is to create greater interdependence between states, which will make them more reluctant to cheat in one issue area for fear that the victim, and perhaps other states, will retaliate in another area. Like iteration, linkage raises the costs of double-dealing and provides ways for victims to retaliate against the cheater.

Third, a system of rules can increase the amount of information available to the participants in cooperative agreements, which permits close monitoring. Raising the level of information discourages cheating by increasing the likelihood cheaters will be caught. It also provides victims with early warning of possible cheating, enabling them to take protective measures before they are badly hurt.

Finally, rules can reduce the transaction costs of individual agreements. When institutions perform the tasks described above, states are able to devote less effort to negotiating and monitoring agreements, and to hedging against possible defections. By increasing the efficiency of international cooperation, institutions make it more profitable and thus more attractive.

There is no question that the fear of a rival state breaking the rules, either covertly or openly, is a central element in the realist story, and one of the driving forces behind security competition and war.78 States are deeply concerned about the balance of power because they can never be certain they will not fall victim to another state cheating. If they do, there is no night watchman they can turn to for help. The key question for our purposes is whether international institutions solve the cheating problem in any way that challenges basic realist logic. Almost certainly, they do not.

The central problem, of course, is the absence of a higher authority that can credibly threaten to punish states if they disobey the rules. International institutions are not autonomous actors that can force a state to obey the rules when it thinks that doing so is not in its national interest. There is no evidence of any institution coercing a great power into acting against realist dictates. Instead, institutions depend on their member states to stick to the rules, because they think it serves their long-term interests. In the institutionalist story, member states have to police themselves.79

But we know from the historical record that states will cheat or disobey when they think that adhering to the rules is not in their interest. Consider, for example, that the United States—the quintessential liberal democratic state—violated international law to initiate wars against Serbia in 1999 and Iraq in 2003.80 In both cases, Washington failed to secure the required United Nations Security Council resolution sanctioning those wars. Still, the United States opted to ignore international law in both cases because it felt there were strong moral and strategic imperatives for doing so. Naturally, it was never punished. One could also point to instances when France and Germany violated well-established EU rules because they believed doing so was in their interest.81 They were not punished either. It is hard to find a case where an international institution punished a great power in any serious way for breaking the rules.

Given that states sometimes have fundamental differences and international institutions cannot meaningfully constrain them, those states recognize that they are operating in a self-help world where it makes eminently good sense to control as large a share of global power as possible, regardless of whether they gain that control by following the rules. After all, if a state obeys the law but sacrifices its security, who will come to its rescue if it is attacked by a rival state? Probably nobody. This logic explains why liberal institutionalism has so little to say about matters of war and peace, and why it does not offer a serious challenge to realism.

I would add a final word about cheating. Fear of cheating is generally considered a more formidable obstacle to cooperation when security issues are at stake:82 betrayal in such circumstances could bring a devastating military defeat. This threat of “swift, decisive defection,” as Charles Lipson writes, is simply not present in international economics. Given that “the costs of betrayal” are potentially much graver in the military sphere, it is hardly surprising that liberal institutionalism has little to say about security affairs but much to say about economic and environmental cooperation. As we saw, the other reason liberal institutionalism is relevant in the economic realm is that states often have common interests that institutions can help realize. In the security realm, where rival states often have fundamental differences, institutions are largely irrelevant, save for alliances.

In sum, international institutions are useful tools of statecraft when states have common interests and need help realizing them. They can facilitate cooperation among states, although that cooperation is not always for peaceful ends. The more important point, however, is that there is no reason to think institutions can push states away from war.

Kwet 20 (Michael Kwet is a Visiting Fellow of the Information Society Project at Yale Law School, A Digital Tech New Deal to break up Big Tech, 10-26, <https://www.aljazeera.com/opinions/2020/10/26/a-digital-tech-new-deal-to-break-up-big-tech>, thanks to y2k)

After “restoring competition” to the tech economy, those who will dominate as “new market entrants” on the “open” internet will still be companies from richer countries: the US, European powers, China, etc, not low-income countries like Zimbabwe, Bolivia or Cambodia. And within low-income countries, the well-resourced classes will capture any new market opportunities that an antitrust push in the US may open.

#### China captures the market

UN News 19 (‘Digital divide’ will worsen inequalities, without better global cooperation, 9-4, <https://news.un.org/en/story/2019/09/1045572>, thanks to y2k)

US and China pull ahead, Africa and Latin America trail behind

The United States and China create the vast majority of wealth in the digital economy, the study reveals, and the two countries account for 75% of all patents related to blockchain technologies, 50% of global spending on the “Internet of Things” (IoT), more than 75% of the cloud computing market, and as much as 90% per cent of the market capitalization value of the world’s 70 largest digital platform companies.

The rest of the world, particularly countries in Africa and Latin America, are trailing considerably behind, and this trajectory is likely to continue, further contributing to rising inequality, said UN Secretary-General António Guterres, in a foreword to the report.

“We must work to close the digital divide” he writes, “where more than half the world has limited, or no access to the Internet. Inclusivity is essential to building a digital economy that delivers for all”.

Massive increase in data on the horizon

Despite the impact that digital data has already had, the world is still in the early days of the data-driven economy, according to the study, which forecasts a dramatic surge in data traffic in the next few years.

This reflects the growth in the number of people using the Internet, and the uptake of frontier technologies such as blockchain, data analytics, artificial intelligence, 3D printing, IoT, automation, robotics and cloud computing.

Platforms to rule the world

Wealth and power in the digital sphere are increasingly being held by a small number of so-called “super platforms”, comprising the seven global brands Microsoft, Apple, Amazon, Google, Facebook, Tencent and Alibaba.

#### Their evidence agrees.

Wong ’20 [Johnson; Graduate School of Public and International Affairs @ UOttowa; “Digital Divide: Geotechnology, Politics and the International System”; <https://ruor.uottawa.ca/bitstream/10393/41017/1/WONG%2C%20Johnson%2020205.pdf>; AS]

Despite the power of institutions and the strength of international organizations to resolve conflicts, the digital divide brought on by technology, economic self-interest, and centuries of culture, will necessarily disrupt the existing international system. Even within Western liberal democratic countries, there continues to be significant systemic confrontations as long-running grievances remain unresolved, such as historical racial divisions, the surge in right-wing populism, and a growing inequality gap. Internationally, there is a shift in the character and ability of international institutions themselves to resolve disputes through existing mechanisms, such as the ABM treaty, the CFE treaty, and the INF treaty. These are a few examples of the breakdown of existing international constructs (Hall, 2019, 4). At the same time, China will continue to offer, in partnership with its Russian and other Eurasian allies, an alternative political model that will emphasize the values and qualities which are important to those societies: social stability, economic prosperity, and national strength. Zhao summarizes this argument “In the final analysis, there is a choice between a Confucius capitalist China that is trying to integrate with a socially and ecologically unsustainable planetary capitalist order and a renewed socialist China that is leading a post-capitalist and post-consumerist, sustainable developmental path as part and parcel of an alternative globalization” (Zhao, 2013, 27). The separation between capitalism and political liberalism is an intentional strategy meant to demonstrate that state governance can be effective without political change. The Chinese model will also emphasize regional strength while avoiding ideas about global tyranny so long as the US continues to be portrayed as an international bully and troublemaker that acts with impunity. On the character about the Internet itself, the seeds of doubt had already been made in various forums: “At the Forum of Independent Local and Regional Media in 2014, Putin labeled the Internet ‘a special CIA project’, adding that the United States wanted to retain their monopoly over it” (Budnitsky and Jia, 2018, 607). The digital divide will become another point of division to separate the global community this century, and as a means for authoritarians to consolidate power. While military conflict may be avoidable, cyberconflict and the use of hybrid warfare – involving careful coordination between state and non-state actors – may take place more often as state forces engage online in efforts to upset the new status quo. The benefits of technology, such as 5G and beyond, may also challenge trends and perspectives about values and culture on both sides as societies and the role of technology to support individual, corporate or state interests evolve.

## Advantage 1

### 2NC---!D---Economy

#### Countries turn inward---prefer post-COVID evidence.

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose.

This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too.

Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure.

I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do.

Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible.

#### Empirics prove---downturn causes threat deflation.

Clary 15, PhD, Assistant Professor of Political Science @ the U of Albany. (Christopher, 04/21/15, “Economic Stress and International Cooperation: Evidence from International Rivalries”, *Massachusetts Institute of Technology Political Science Department*, Research Paper No. 2015-8; pg. 4)

Why Might Economic Crisis Cause Rivalry Termination?

Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.

### !D---AT: LIO

#### Liberal order resilient---assumes the internal link.

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

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

### !D---AT: US Leadership

#### No link---no relative decline. Economic recessions hurt China and Russia just as much as the US.

#### AND, no leadership impact.

Fettweis ’17 (Christopher J.; is Associate Professor of Political Science at Tulane University; May 8th; *Unipolarity, Hegemony, and the New Peace*; <https://www.tandfonline.com/doi/abs/10.1080/09636412.2017.1306394?journalCode=fsst20>; accessed 5/3/19; MSCOTT)

These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace.

In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington’s intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a high-level US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day.

The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work.

Conflict and US Military Spending

How does one measure polarity? Power is traditionally considered to be some combination of military and economic strength, but despite scores of efforts, no widely accepted formula exists. Perhaps overall military spending might be thought of as a proxy for hard power capabilities; perhaps too the amount of money the United States devotes to hard power is a reflection of the strength of the unipole. When compared to conflict levels, however, there is no obvious correlation, and certainly not the kind of negative relationship between US spending and conflict that many hegemonic stability theorists would expect to see.

During the 1990s, the United States cut back on defense by about 25 percent, spending $100 billion less in real terms in 1998 that it did in 1990.68 To those believers in the neoconservative version of hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan at the time.69 The world grew dramatically more peaceful while the United States cut its forces, however, and stayed just as peaceful while spending rebounded after the 9/11 terrorist attacks. The incidence and magnitude of global conflict declined while the military budget was cut under President Clinton, in other words, and kept declining (though more slowly, since levels were already low) as the Bush administration ramped it back up. Overall US military spending has varied during the period of the New Peace from a low in constant dollars of less than $400 billion to a high of more than $700 billion, but war does not seem to have noticed. The same nonrelationship exists between other potential proxy measurements for hegemony and conflict: there does not seem to be much connection between warfare and fluctuations in US GDP, alliance commitments, and forward military presence. There was very little fighting in Europe when there were 300,000 US troops stationed there, for example, and that has not changed as the number of Americans dwindled by 90 percent. Overall, there does not seem to be much correlation between US actions and systemic stability. Nothing the United States actually does seems to matter to the New Peace.

### !D---AT: Populism

#### Economic crisis doesn’t cause retrenchment---empirics.

Drezner 14, IR prof at Tufts. (Daniel, January 2014, “The System Worked: Global Economic Governance during the Great Recession, World Politics”, Volume 66. Number 1; pp. 123-164)

The final significant outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.42 They voiced genuine concern that the global economic downturn would lead to an increase in conflict—whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fueled impressions of a surge in global public disorder. The aggregate data suggest otherwise, however. The Institute for Economics and Peace has concluded that "the average level of peacefulness in 2012 is approximately the same as it was in 2007."43 Interstate violence in particular has declined since the start of the financial crisis, as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict, as Lotta Themner and Peter Wallensteen conclude: "[T]he pattern is one of relative stability when we consider the trend for the past five years."44 The secular decline in violence that started with the end of the Cold War has not been reversed. Rogers Brubaker observes that "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."43

# 1NR

### Link Alone Turns Case

#### Link alone turns the case---even ambitious enforcement flounders with political backlash

Jones and Kovacic 20, \*Alison Jones is Professor of Law, King’s College London, London WC2R 2LS, United Kingdom \*William E. Kovacic, (“Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” *The Antitrust Bulletin,* 202, Vol. 65(2) 227-255, <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>)

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125 The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

### U---AT Thumper---Old Stuff

#### End-game political capital is all that matters

Thrush 10-1-2021 (Glenn, “Why does Washington do everything at the last minute? It’s complicated.,” *New York Times*, <https://www.nytimes.com/2021/10/01/us/politics/infrastructure-bill-last-minute.html>)

The wrenching intraparty battle taking place among Democrats on Capitol Hill is a unique, perhaps historical, reckoning — but it is also the most Groundhog Day of Washington crises: a frenzy of last-second action preceded by epic procrastination. The stakes are immense: President Biden’s $1.2 trillion infrastructure plan, another $3.5 trillion toward human capital and social welfare programs, the fate of the progressive agenda and, quite possibly, the viability of a fragile Democratic governing coalition. Which explains why Democrats have delayed the current confrontation like it was the mother of all dentist’s appointments. Just how much they procrastinated became all too apparent on Thursday. The declaration by Senator Joe Manchin III of West Virginia that liberals needed to pare $2 trillion from their social spending plan to get his vote stunned many Democrats, who had assumed their leaders had gotten much closer to a deal since July, when a preliminary agreement on infrastructure was announced. “I am trying to get something over the finish line at the last minute this week too, so I get it, I really do,” wrote Luppe B. Luppen, a liberal lawyer and commentator wrote on Twitter Thursday night. “But we all would’ve been so much better off if the events of today in Congress had happened on like august 5th.” Serious negotiations did not really hit stride until the past two weeks, according to congressional and White House aides. The intense round of talks intended to close a gap of many hundreds of billions between warring Democratic factions began in just the past 48 hours, as the party crashed through Speaker Nancy Pelosi’s self-imposed deadline for a deal. The slow-walk, fast-finish pace — however maddening to all involved — is part of a venerable legislative pattern that dates back decades. Most of the biggest budget packages and sweeping legislative deals in recent history have been the subject of intense 11th-hour horse-trading, very often between Democratic progressives and party conservatives. (The historian Robert Caro has filled volumes with details of Lyndon Johnson’s high-pressure tactics in ramming through civil rights legislation both as a Senate leader and as president.) But the proliferation of dramatic, last-second deals has increased dramatically in the hyperpartisan environment of the past quarter-century. That has made every issue that requires bipartisan cooperation a choke point, and matters like budget-making and fiscal policy, once routine, have become subject to anguished last-minute negotiations, giving individual lawmakers — like Mr. Manchin — immense power to veto, alter and delay. Editors’ Picks The Marvelous Physics of Swarming Midges How I Knew I Needed to Quit Instagram He Sees Migrants as ‘Modern Slaves,’ and Has Devoted His Life to Helping Them Continue reading the main story Like severe weather, the legislative procrastination is getting worse. Over the last decade, raising the debt limit, once a pro forma vote, has become an issue of heated contention, often pushing the country to the brink of crisis. Spending battles, even when it comes to more mundane yearly budget negotiations, are even harder to resolve. They are now always settled at the 11th hour, or far past deadline — as evidenced by 22 government shutdowns since 1980 — with each faction seeking to leverage fear over delays and shutdowns to their advantage. The longest was the most recent, a 35-day shutdown from late 2018 to early 2019 that occurred when former President Donald J. Trump tried, and failed, to pay for his plan to build a wall on the border with Mexico. But both President Bill Clinton and President Barack Obama presided over shutdowns of two to three weeks. On Thursday, just hours before the midnight deadline, Congress approved and Mr. Biden signed a spending bill that extends federal funding through early December. But the two measures being discussed this week are even more monumental, transformative and politically charged. And at the center of it all is Mr. Biden, a former senator who views the upper chamber as a benign deliberative body that has the right to take its time. He is not prone to make the kind of the lapel-clutching demands of Mr. Manchin that President Johnson would have, but the pressure on him is increasing.

### U---AT Thumper---Afghanistan

#### Withdrawal doesn’t cost PC

Kapur 8-24-2021 (Sahil, “Joe Biden bets a war-weary America will reward him for leaving Afghanistan,” *NBC News*, <https://www.nbcnews.com/politics/white-house/joe-biden-bets-war-weary-america-will-reward-him-leaving-n1277104>)

President Joe Biden is standing firmly by his decision to withdraw U.S. forces from Afghanistan, despite chaotic scenes of the Taliban rapidly seizing control and the U.S. rushing to airlift diplomats out of the country. Behind his confidence is a political bet that a war-weary U.S. public will stick with him and enable him to weather a firestorm of criticism, not just from his Republican opposition but also from Democratic allies who promise to investigate failures surrounding the withdrawal. Public support for the withdrawal has fallen from earlier this year, but pluralities still want U.S. forces out, according to two new surveys. A Yahoo News poll found that 40 percent support the pullout, while 28 percent oppose it. (In July, 50 percent favored the pullout.) A Morning Consult/Politico poll found that 49 percent support the withdrawal, while 37 percent oppose it. (In April, 69 percent backed withdrawal.) The criticism has been heaviest over the execution of the withdrawal, including the failure to evacuate U.S. personnel and partners in time for the rapid Taliban takeover. Republican lawmakers, and some Democrats, have compared it to the fall of Saigon, South Vietnam, in 1975. At the moment, Biden needs all the political capital he can muster, in order to spend it on signing an infrastructure bill and a $3.5 trillion social safety net package at the core of his domestic agenda, which his party is counting on to survive a difficult midterm election cycle next year. Democratic strategists say Biden is on solid political footing, arguing that Americans will ultimately see the issue as a simple choice between continuing the occupation and ending it.

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#### Both infrastructure bills pass now---Biden’s on the brink of victory. Recent changes have mollified the party, but speed and avoiding unforced errors is key

Collinson 10-29-2021, analyst @ CNN (Stephen, “Democrats fight one another in Washington as Americans struggle,” *CNN*, <https://www.cnn.com/2021/10/29/politics/congress-spending-bill-president-joe-biden-italy-g20-democrats/index.html>)

Changing millions of lives

There is no doubt that if it passes, the social spending package, which makes housing, education, health care and home care more affordable, has the potential to change millions of lives. The climate proposals could unleash a new green economy as well as help save the planet. And Biden will probably eventually get his Washington victory lap. His domestic policy chief Susan Rice told CNN's Anderson Cooper Thursday the White House was "very confident" a framework accepted by House progressives would be the basis of the spending bill that would now be able to pass both chambers. The two holdout moderate Democrats, Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, are yet to publicly and unreservedly endorse the framework. The question now, after another missed deadline, is when the situation will change. In the last few days, the spectacle of Democrats ditching multi-billion dollar programs and hurriedly trying to come up with new ways to fund the bill has left an impression of chaos that hardly enhances the reputation of one of the biggest social spending bills in generations. The longer the impasse lingers, the greater the risk that moderate Senate Democrats will get cold feet. Or that progressives will sour on a framework for a deal that cuts out many of their favorite programs, including paid family leave and free community college. Biden's departure for the G20 summit in Italy and the UN climate conference in Scotland was set by Democratic leaders as the latest deadline to pass the infrastructure and spending bills. On Thursday, it also became the latest must-pass date to be missed, reflecting a growing habit for the White House to set deadlines that are not met and frazzle the President's credibility. As a result of the latest miss, Biden showed up in Rome looking like a President who cannot get his own house in order before he meets world leaders to reaffirm US leadership. Biden had particularly wanted climate programs in the spending bill sent to his desk before he left, to pressure other nations to make significant cuts to carbon emissions at the climate summit. Progressives believe that the social spending bill, which offers universal pre-school, home health care for the sick and the elderly and $500 billion in spending to combat climate change, is a once-in-a-generation chance to overhaul the economy to alleviate the burden on working Americans.

#### Passage is likely---dems are inching closer

Stimson 10-29-2021 (Brie, “Progressives block infrastructure vote before Biden trip, but back reconciliation plan: LIVE UPDATES,” Fox news, <https://www.foxnews.com/live-news/biden-europe-democratic-infighting-infrastructure-vote>)

The Congressional Progressive Caucus got the best of House Speaker Nancy Pelosi, D-Calif., and President Biden yet again Thursday after the pair pushed for a vote on the infrastructure bill before Biden's climate summit in the U.K. next week. The caucus forced the House to put off a vote on the bill yet again. The group and Chairwoman Rep. Pramila Jayapal, D-Wash., are demanding more progress on the passage of Democrats' reconciliation spending plan before they will let the bipartisan infrastructure bill pass, because they don't trust Senate moderates to pass it. "The reality is that while talks around the infrastructure bill lasted months in the Senate, there has only been serious discussion around the specifics of the larger Build Back Better Act in recent weeks, thanks to the Progressive Caucus holding the line and putting both parts of the agenda back on the table," Jayapal said in a Thursday statement. "Members of our Caucus will not vote for the infrastructure bill without the Build Back Better Act. We will work immediately to finalize and pass both pieces of legislation through the House together," she added. But Jayapal and her members also endorsed the framework for a reconciliation bill that President Biden released Thursday morning, which would cost $1.75 trillion. $1.75 trillion is an exorbitant amount of money. But it's half of the $3.5 trillion progressives were pushing for at the beginning of the reconciliation process. And some progressives had their sights set even higher, on a bill that might cost $6 trillion or more. The price needed to drop because Sens. Joe Manchin, D-W.Va., and Kyrsten Sinema, D-Ariz., as well as other moderates in the House and Senate, were concerned about spending too much money as the economy is coming out of the coronavirus pandemic. Neither Sinema nor Manchin have explicitly endorsed the Biden reconciliation framework yet. And Democrats admit that there is still a lot of work to do to turn the president's proposal into a final bill that will pass both the House and the Senate -- any one senator, or just a handful of House members, can tank the whole endeavor. But with progressives' support for a plan that represents massive compromises on many of their biggest priorities, Democrats appear to be inching closer to a deal that could see both infrastructure and reconciliation pass in November. "The Congressional Progressive Caucus just overwhelmingly voted to endorse in principle the entire Build Back Better Act framework announced by President Biden today," Jayapal said Thursday.

#### Passes now, with effective use of PC

Bannon 10-7-2021, Democratic pollster and CEO of Bannon Communications Research. His podcast, “Deadline D.C. with Brad Bannon,” airs on Periscope TV and the Progressive Voices Network (Brad, “A proud year for Biden and progressives,” *The Hill,* <https://thehill.com/opinion/white-house/575654-a-proud-year-for-biden-and-progressives>)

The picture hasn’t been pretty, but the finished portrait will paint 2021 as a proud and productive year for the president and the progressives in his party. The American Rescue Act is already law and eventually both infrastructure bills will pass Congress in some form. Everybody wants the smaller of the two packages and House progressives have made it clear that you can’t get the small one without the big bill. The basic bipartisan infrastructure proposal is good but not good enough to fundamentally reform and revitalize the economy. Passing the basic package without the premium package would be like buying property in a pricey residential neighborhood and then putting in a foundation without spending the money to build the house. The enactment of all three bills in a divided and polarized political climate would be a significant accomplishment for the president and will revitalize the economy, fight climate change and make wealthy Americans and big corporations pay their fair share of taxes. In the face of an intense lobbying campaign by big business lobbyists, and having only a razor-thin majority in Congress, President Biden, Sen. Bernie Sanders (I-Vt.) and their aggressive progressive supporters are about to pull off a remarkable political miracle. Progressives won’t get everything they want but they will get the tools they need for America to deal with the existential threats to the economy and the planet. Sanders lost the battle for the presidential nomination but won the war for the heart and soul of the Democratic Party. Biden rose to the challenge to create a dynamic economy in a changing world. His extensive legislative experience as a senator for 36 years gave him the tools to negotiate the slippery slope that separated progressive and moderate Democrats. The Progressive Caucus in the House of Representatives led by Rep. Pramila Jayapal (D-Wash.) deserves credit for standing firm and to counter the leverage that moderate Democrats like Sen. Joe Manchin (D-W.Va.) and Sen. Kyrsten Sinema (D-Ariz.) enjoy in the closely divided Senate. Progressives learned to play hardball and will probably win the game even though it required sacrifices to score. The media has shortchanged the power of the progressives in the fight for America’s future. The spotlight has been on moderate Democratic senators Manchin and Sinema, shortchanging the attention given to progressive Democrats. But if the basic infrastructure funding and Build Back Better packages both pass, progressives in the Democratic Party will have expanded America’s capacity to meet the pressing challenges that confront the future of the United States. These bills together with the American Rescue Act would constitute a remarkable legislative trilogy that could meet the challenges of a changing world economy and battle the ravages of climate change. The Child Tax Credit in the American Rescue Plan pumped much-needed financial aid to hard-working families with vulnerable children. The Infrastructure Investment and Jobs Act will modernize our outdated and archaic electronic and transportation infrastructure. The jewel in the crown is the Build Back Better Plan, which provides for clean energy jobs, universal pre-school and free two-year college and vocational education.

### Link

#### ---The plan can only pass through budget reconciliation

Sagers 21, Professor of Law, Cleveland State University (Christopher, “AMERICAN ANTITRUST AND THE NEAR TERM: CONSISTENCY, ONE IMAGINES, AND SOME REASONS WHY,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>)

15. And so I reach the same conclusion being reached by many other Americans who care about antitrust and think it has been wrecked, and hoping for action that even five years ago I would have said was crazy. The only hope left is legislative reform of statutory antitrust. I think Congress should amend the law to reaffirm its own intention that the law be enforced proactively, aggressively, prophylactically, and for real, without giving every defendant the benefit of every conceivable doubt. Congress should do that in a way that keeps the courts from thwarting its intent through nullifying interpretations, as they have done many times before. Obviously, Senate control is again quite relevant. Under those Senate norms that still remain—in which we retain a filibuster rule for ordinary legislation—a party with fewer than 60 seats can typically do little. The two parties do not apparently work together in hardly any fashion. The party that holds the majority, even if only by one vote, controls the institution and its actions outright, but the minority can typically keep it from taking meaningful substantive action. Where the opposing party holds the White House, Senate minorities have filibustered essentially all legislation, apparently just to deny the opposing President any opportunity for campaign-trail self-congratulation. When the majority party can take effective action, it will only be in extraordinary circumstances or by using a filibuster exception, like the budget reconciliation procedure that was used in connection with the Obamacare legislation in 2010, and in subsequent Republican efforts to repeal it. [304] But antitrust, however important and however much it has returned to popular consciousness, seems unlikely to be so high on the Democratic agenda that it is chosen as one of the extraordinary matters Democrats prioritize in this way, even if they win Senate control. 16. And on top of all of that, it does not help that in this world, in which we dwell on ideas and not institutions—perhaps because institutions seem boring, and do not invite intellectual abstraction or Manichean dreams of good and evil—we see sharp divisions even within our factions. Only liberals and progressives in America favor more antitrust enforcement, but among us we have several hotly disputed disagreements, and some difficulties getting along. It reflects in microcosm the struggle of left and center of the election of 2016. So in 2021 and thereafter, it seems like it will be a fair bit of work to build any effective reform coalition. [305] 17. So, while I think that antitrust law will remain basically the same for the next four years, it is emphatically not because we all agree that it should. I think it is fairly likely that less than a majority of us do. It will be because the only institutions that matter are so radically, heavily stacked against change.

#### There’s only one available. The plan wastes it, which makes infrastructure susceptible to filibuster

IIA 21 (Invest in America, “INVEST IN AMERICA WEEKLY ROUNDUP,” <https://investinamericanow.com/news/invest-in-america-weekly-roundup-17/>)

Steven Dennis tells Lawrence O’Donnell that Democrats’ strategy to pursue the reconciliation bill on infrastructure in addition to bipartisan Senate agreement will be a complex process, but gives Democrats “one chance to do things that McConnell can’t veto.” Jonathan Alter adds that Biden “has to put points on the board” and infrastructure is the most popular way for Democrats to do that. The American Independent: Poll shows voters want Biden spending plans even without support of GOP lawmakers More than three-fifths of likely voters want Congress to pass President Joe Biden’s spending plans, even if the Democratic majority has to do so without a single Republican vote, according to a new poll. The survey, conducted by Data for Progress for Invest in America, which campaigns for public investment in infrastructure, was released Tuesday. It found 62% support for passage of Biden’s American Jobs Plan and American Families Plan through the budget reconciliation process, which allows the Senate to pass taxation and spending bills by a simple majority vote.

### \*\*IL---Solves Climate---New Bill

#### Reconciliation solves climate change---it meets targets, spurs global follow-on

Chow 10-28-2021, reporter for NBC News Science focused on general science and climate change (Denise, “Biden’s scaled-down spending bill has big upsides for climate fight,” NBC News, https://www.nbcnews.com/science/environment/bidens-scaled-spending-bill-big-upsides-climate-fight-rcna4061)

(Denise, Denise Chow is a, <https://www.nbcnews.com/science/environment/bidens-scaled-spending-bill-big-upsides-climate-fight-rcna4061>)

Many climate activists are applauding the $1.75 trillion spending bill unveiled Thursday by President Joe Biden, a move that experts say will be crucial to staving off the worst effects of global warming and building a more livable future. Biden’s proposed framework includes $555 billion in clean energy investments, incentives and tax credits that would help the country meet its goal of reducing greenhouse gas emissions by at least 50 percent by 2030. If passed, environmental experts said it’s the type of legislation that could create much-needed momentum to slash pollution levels and address the climate crisis in the United States and on the global stage. The proposal also backs up promises that Biden campaigned on, making climate change a sizable focus of his administration’s biggest spending bill. “This would be an absolutely historic investment in clean energy and environmental justice — both of which are essential for climate progress,” said Abigail Dillen, president of Earthjustice, a nonprofit environmental law group based in San Francisco. “A package that makes all those investments at a scale that will be transformative over the next eight years is incredible.” The new framework comes after prolonged negotiations between the White House and two moderate Democratic senators, Joe Manchin of West Virginia and Krysten Sinema of Arizona, who opposed key parts of Biden’s original “Build Back Better” plan. Some environmental advocates had hoped for an even larger climate package. “The Build Back Better Framework announced by the White House today doesn’t go far enough to address the economic and climate crises facing our generation,” Cristina Tzintzún Ramirez, president of NextGen America, a progressive advocacy nonprofit started by billionaire and former Democratic presidential candidate Tom Steyer, said in a news release. “A few moderate Democrats negotiated against the best interest of the American people, forcing the rest of their party to renege on essential promises.” Biden on Thursday urged Congress to pass the proposal, saying that the investments will “truly transform this nation.” Earlier this year, the Senate passed a nearly $1 trillion infrastructure bill with robust bipartisan support, but the House has yet to vote on that measure, citing the need for parallel action on the social safety net portion of Biden’s agenda. The bill’s timing is crucial as Biden is set to meet with other world leaders in Scotland next week for the United Nations Climate Change Conference, where countries are expected to negotiate and set forth targets to reduce emissions in line with the goals of the Paris Agreement. Stalled negotiations had generated concern among environmentalists around the world that Biden could show up to the conference empty-handed, leaving little incentive for other countries to offer their own aggressive plans to cut carbon emissions. Sam Ricketts, co-founder and co-director of the climate advocacy group Evergreen Action, said lawmakers should feel increased urgency to pass the revamped Build Back Better act, but added that the proposal itself should benefit Biden by demonstrating to other nations that the U.S. is actively working to achieve its emissions targets. “This will show the global community that America really is an ally and can be a leader in driving forward global climate efforts,” Ricketts said. “It shows that after four years of President Trump’s outright climate denial, the U.S. government is moving with leadership against this global crisis.” The proposed climate bill will also give the U.S. stronger footing in Scotland during negotiations with other top emitters, including China. “The Biden administration will have more leverage t

o push other countries to make strong commitments,” said Danielle Arostegui, a senior climate analyst at the Environmental Defense Fund. “We can show that we’re putting our money where our mouth is.” The bill would significantly boost investments in renewable energy, including for solar and wind power, and would provide clean energy tax credits and an electric vehicle tax credit that would lower the cost of an electric vehicle by up to $12,500 per middle-class family, according to the White House. The framework also prioritizes environmental justice by earmarking 40 percent of the overall benefits of investment for disadvantaged communities. The plan would fund the electrification of ports, in addition to electrifying bus and truck fleets, and would provide grants to communities that are disproportionately affected by climate change and economic injustice. “This marks a new beginning in the fight against injustice in this country, and a long-overdue boost to the communities that have struggled with the toxic legacy of environmental pollution and systemic racism,” officials with the Equitable and Just National Climate Platform, a consortium of climate change and environmental justice advocates, said in a statement. Dan Lashof, U.S. director of the World Resources Institute, a Washington-based research nonprofit group, said the legislation could bring the country significantly closer to meeting its emissions goals, but added that there is still ground to make up. The White House said the bill will reduce greenhouse gas emissions by 1 billion tons by 2030, but Lashof said a total of 2 billion tons of emissions need to be cut to reach Biden’s target by the end of the decade. Still, he said these types of investments could spur other developments in the private sector, or at the state and local level, which could make up the difference. “It’s important to recognize that this is a huge amount of progress,” Lashof said. “This bill together with the infrastructure bill really does lay the foundation for meeting the 2030 target. It’s all moving in the right direction.”

# 2NR

#### Prefer our ev---the media hypes disfunction---dems are closer than they might look

**Myers 10-1**-2021, plugged-in political analyst and chairman of Signum Global Advisors (Charles, interviewed by Matt Peterson, “‘Go for Growth at Any Cost’: What’s Driving Democratic Strategy into the Midterms,” *Barron’s*, <https://www.barrons.com/articles/whats-driving-democratic-strategy-into-the-midterms-biden-debt-ceiling-51633119902>)

It has been a week in which anything seemed possible in politics. The range of plausible futures spans an unprecedented default on federal debts, at one extreme, and, on the other, passage of multiple multi-trillion-dollar fiscal packages that would reshape the social contract. It’s a lot to take in. To put the chaos in context, Barron’s called Charles Myers, a plugged-in political analyst and chairman of Signum Global Advisors. In an interview in March, he warned that virtually every Democratic priority other than taxes and infrastructure would be dead on arrival in a divided Senate, and that the country would soon be facing another debt-ceiling crisis. Here we are. He updated those projections in a phone conversation on Friday afternoon, when he was fresh off meetings on Capitol Hill. This transcript has been condensed and edited for clarity. Barron’s: Let’s level-set. How dysfunctional is the policy process right now on a scale of one to 10? One is, say, we’re going to breach the debt ceiling, and **10** is things are working well. Charles Myers: It varies by issue. On BIF [the bipartisan infrastructure framework] and on reconciliation, I would say the dysfunction is **far less than it appears** from the outside, meaning **internally** within the **Dem**ocratic Party. We could even have a vote on BIF tonight. It may slip until tomorrow. **They’re very close**. On that issue, I would give it an **eight**, **despite the noise**. On the debt ceiling, I would give it a two because the Democratic leadership is insisting that Republicans vote with them to lift or suspend the ceiling. That’s just not going to happen. Their procedural alternative to raise the ceiling is to pass a new budget resolution, just the Democrats, and then hold a standalone vote on the debt ceiling and lift it to a new number. From everything we’ve seen, that process could take seven to 10 days. If they really accelerated, there’s a possibility they could do it in three to four days, but that’s assuming everything works perfectly. Nothing in Washington ever works perfectly. The risk on the debt ceiling is that we get much closer to the edge than is comfortable for the markets. If there’s no clarity on resolution of the debt ceiling, I would argue, before the 8th, 9th, 10th of October, the markets will start to really sell off. Then the risk of missteps and actually breaching the ceiling is quite high. On that issue at the level of dysfunction is quite high because of the politics involved and how angry the Democrats are that they did vote in a bipartisan way three times under President Trump to raise or suspend the ceiling. What would tip the Democrats over into starting the reconciliation process to raise the debt ceiling? Because as you said, right now, they’re angry that Republicans don’t want to help. It’s going to be a function of two things. One, if BIF actually passes in the House, it gets that done and is a big win for Biden and for the Democrats. The second thing is the calendar, meaning reality. As we head into the next four to five days, the leadership is really bumping up against a calendar deadline, that in fact could — and they’re very much aware of this — put them in very dangerous waters. It sounds like even in the best-case scenario, we’re looking at much of October being filled with alarming headlines from Washington. On the debt ceiling, yes. For the market, it’s the single biggest issue right now in the very short term. Our base case is the Democrats will raise it just in time, but we’re going to get a little closer to the edge than is comfortable for the market. Let’s talk about the rest of the legislative package. You’re just back from Washington. What did you hear? A couple takeaways: One is, between the moderates and the progressives, there’s far more common ground on almost all of Biden’s domestic agenda [**than press reports suggest**]. The vast majority of Democrats really want it to happen. Raising the debt ceiling, they all know they have to. And then on the rest of the agenda, the reconciliation package, there’s disagreement over size. I think that in the end [West Virginia Sen. Joe] **Manchin can be moved**, and **we’re**probably **looking at** $1.5 trillion to **$2 trillion** in new spending. The **progressives** aren’t going to be happy with that number, but they **will accept it**. There’s still going to be quite a bit of negotiating and disagreement over both content and size of each of the different programs. What I what happens is that most of the spending categories would just be reduced, not necessarily pro rata. For example, the proposal to make the expanded child-tax credit permanent will be changed to a one-year extension, or something similar. That actually saves a lot of money. Expanding Medicare to include vision, dental, and hearing, maybe it’s just to include, this time around, vision and dental. Universal pre-k, all of these things probably get funded, but they get scaled back pretty dramatically.

#### Current FTC measures will comply with notice and comment

**Brown & Pozza ’21** [Megan; 3/31/21; Wiley Rein LLP; and Duane; Wiley Rein LLP; “FTC Prepares to Expand Rulemaking, Including on Privacy and Data Use”; <https://www.jdsupra.com/legalnews/ftc-prepares-to-expand-rulemaking-7281226/>; AS]

Last week the Federal Trade Commission (**FTC**) announced the creation of a **new rulemaking group** within the FTC’s Office of the General Counsel. The announcement and other statements **signal** that the FTC under Acting Chairwoman Slaughter will be much **more active** in proposing rules on **high profile issues**. The agency’s announcement notes that the rulemaking group will tackle both unfair and deceptive practices and **unfair methods of competition**. And in separate remarks on March 26 at the American Bar Association Antitrust Law Spring Meeting, Acting **Chairwoman** Slaughter suggested that the agency may move forward on **rulemakings** about **data use** – which could encompass privacy, concerns about alleged manipulation on data **platforms**, and competition issues.

The New Office is a Shift From the Commission’s Decades-Old Approach to Rulemaking

The establishment of a dedicated **rulemaking group** is a **significant change** for the FTC, which has been restricted in its rulemaking activity since the last century. In response to controversies over how the FTC was engaged in rulemaking at the time, Congress passed legislation over four decades ago that significantly constrained the FTC’s rulemaking authority. In general, the FTC is required to follow cumbersome rulemaking requirements in addressing unfair or deceptive practices (generally known as “Magnusson-Moss” rulemaking), which go well beyond normal agency Administrative Procedures Act (APA) procedures.

As a result, in recent years, the FTC has relied much more heavily on enforcement actions rather than rulemaking to articulate its expectations. This approach has been controversial and resulted in high profile disputes in the area of data security, including prolonged litigation with Wyndham and LabMD. Structurally, responsibility for various rules is currently distributed among staff throughout the agency. And many of the rules the FTC still enforces are focused on narrow segments of the economy (e.g., the contact lens rule).

This means that, unlike the Federal Communications Commission (FCC), the FTC has comparatively little expertise in traditional rulemaking procedures, such as under the Administrative Procedure Act. In the context of ongoing debates over federal privacy law, some commentators have warned against giving the FTC broad rulemaking authority.

A rulemaking group within the General Counsel’s office would not only develop greater expertise in rulemaking best practices, it would help agency leadership evaluate legal issues, both in the record and in court. Substantively, a rulemaking group would be charged with considering rules dealing with both consumer protection and competition issues. As the agency’s release put it:  “The new structure will aid the planning, development, and execution of rulemaking – especially new rulemakings – in turn making the Commission’s work more efficient and potent.” Additionally, as the General Counsel is appointed by the Chair, the Chair would be better able to coordinate rulemaking efforts (though any notices or final rules will require a Commission vote).

What Will the Agency’s Rulemaking Priorities Be?

Last week, at the ABA Antitrust Law Spring Meeting, Acting Chairwoman Slaughter indicated that one **priority** would be to conduct a data-related **rulemaking**, which could encompass not just traditional **privacy** issues, but also alleged manipulation on data **platforms** and competition issues. She may have bipartisan support on the Commission for at least some rulemaking in this area:  In a speech at Silicon Flatirons in February, Commissioner Christine Wilson stated that she may be open to the possibility of a privacy rulemaking, in order to address what she characterized as a “market failure” in privacy, and to bring greater certainty and predictability for business.

Acting Chairwoman Slaughter has also been outspoken about the need for the agency to address **algorithmic discrimination** and what she has long called “data abuses.” In a speech last year, she argued that a Magnusson-Moss rulemaking this area, while “slow and imperfect,” could “generate a rule in this area if Congress ultimately fails to act,” or at least “significantly advance the public debate.” And she argued that a rule “might be able to affirmatively impose requirements of transparency, accountability, and remedy . . . in a way that takes into account context and relative risk.”

There may be greater rulemaking on the **antitrust side** as well. In recent Congressional testimony, Acting Chairwoman Slaughter noted that rulemaking may be preferable to case-by-case litigation in dealing with certain competition issues. One likely area appears to be **non-compete provisions** in employment contracts. In her testimony, she noted that she “strongly support[s] the Commission taking up and considering a rulemaking to address unfair and anticompetitive non-compete provisions in employment contracts.” Similarly, Lina Khan, who has been nominated for the open Commissioner slot, has also indicated that she is favor of a non-compete rulemaking in an article co-authored with current Commissioner Rohit Chopra (who has been nominated to lead the Consumer Financial Protection Bureau).