# 1NC – Round 3

## OFF

### 1NC---States CP

#### The 50 United States and relevant subnational entities should enact and enforce substantial legislation prohibiting private sector business practices\* that violate a worker welfare standard.

\*Based on the 1ac solvency evidence, these practices include:

-wage reductions and discrimination

-poor benefits allotments

-poor worker conditions

-attempts at union-busting.

#### That’s enforceable and solvent.

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.

### 1NC---Regulation CP

#### The United States federal government should

#### establish regulations that prohibit private sector business practices that violate a worker welfare standard,

#### fully exempt labor unions from antitrust law.

#### Solves, competes, and avoids the enforcement DA.

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

### 1NC---T-Prohibition

#### T Prohibition

#### “Prohibition” requires a declaration of per se illegality

Loevinger 61 (Honorable Lee Loevinger- Assistant Attorney General in charge of the Antitrust Division. “THE RULE OF REASON IN ANTITRUST LAW” , *Section of Antitrust Law* , 1961, Vol. 19, PROCEEDINGS AT THE ANNUAL MEETING, ST. LOUIS, MISSOURI, AUGUST 7 THROUGH 11, 1961 (1961), pp. 245-251, JSTOR accessed online via KU libraries, date accessed 9/13/21)

Running through the history of antitrust law are two contrapuntal themes: A prohibition of restraint of trade and a principle lately called the "rule of reason" which limits the prohibition. The legal rule against restraint of trade began in the 15th century in cases holding that a contract by which a man agreed not to practice his trade or profession was illegal.1 However, in the course of development of the common law, it became established that agreements which were ancillary to the sale or transfer of a trade or business and which were limited so as to impose a restriction no greater than reasonably necessary to protect the purchaser's interest.2

Thus, when the Sherman Act incorporated the common-law principles on this subject into federal statutory law 3 by adopting the concept of restraint of trade, it presumably imported both the principle that restrictions on competition are illegal and also the principle that in some circumstances a showing of reasonableness will legalize restrictions on competition. Nevertheless, when the question was first presented to the United States Supreme Court under the Sherman Act, it was clearly held (despite later disavowals4 ) that the justification of reasonableness was not available as a defense to a combination which had the effect of restraining trade.' Indeed, it was intimated that the question of reasonableness was not open to the courts in these actions at common law.6 However, when the Court reviewed this matter in Standard Oil Co. v. United States,7 it said in fairly explicit terms both that the Sherman Act prohibited only contracts or acts which unreasonably restrained competition and that the standard of reasonableness had been applied to all restraints of trade at the common law. The Court's assertion is somewhat weakened by the fact that it construed the rule of reason not as applying a standard for judging the character or consequences of the challenged conduct, but as a technique involving the application of human intelligence, or reason, to the problem of making a judgment about whether the conduct does restrain trade.'

#### Violation — rule of reason is not topical

McKibben 85 (Michael D. McKibben-Vanderbilt University Law School, J.D., 1985, Vanderbilt Law Review, Associate Editor; Patrick Wilson Scholar. The Resale Price Maintenance Compromise: A Presumption of Illegality, 38 Vanderbilt Law Review 163 (1985), Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol38/iss1/3> , date accessed 9/13/21)

A rebuttable presumption, followed by rule of reason analysis 14 [[BEGIN FOOTNOTE 14]] 14. Under the rule of reason "the factfinder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition." Sylvania, 433 U.S. at 49. [[END FOOTNOTE 14]] in cases in which the defendant satisfies the threshold inquiry,15 would restore certainty and intellectual honesty to RPM cases. The rebuttable presumption would eliminate the need to reconcile contrary cases and the need to consider issues that parties now must address under the rule of reason. While the rebuttable presumption does not require that courts maintain or reject the Colgate doctrine,16 this Note argues that the Court could retain Colgate but primarily rely upon the guidelines and safeguards of the rebuttable presumption. This new line of inquiry would retain the benefits of the per se rule-efficiency and certainty-and would remain flexible enough to accommodate special cases in which RPM may be beneficial to the market. In many cases, the rebuttable presumption also would save society, courts, and litigants the protracted costs of rule of reason analysis.

Part II of this Note considers major RPM cases since the early 1900s, with special focus on Russell Stover and Filco v. Amana Refrigeration, Inc.,'17 cases which protect the defendant under the Colgate doctrine. Part III analyzes the weaknesses of the per se rule and the benefits that could inure to manufacturers and the marketplace under the rebuttable presumption. Part IV examines the strengths and weaknesses of the rule of reason and offers an improved rule of reason approach as the second part of the rebuttable presumption standard. Finally, Part V outlines a suggested analysis for RPM disputes using a rebuttable presumption of illegality. Part V also considers the effects of the presumption on federal antitrust laws.

II. THE CURRENT CONTROVERSY

A. Minimum Price Restrictions in the Supreme Court

Vertical price restrictions are written or oral directives setting a price above or below which a manufacturer wishes its distributors to sell. If the manufacturer establishes a price below which a distributor should not resell a product, the manufacturer is imposing minimum price RPM. Maximum price RPM-the setting of price ceilings- and minimum RPM are per se violations of section 1 of the Sherman Act."' Nonprice vertical restrictions, however, which include primarily territorial distributorship limitations, generally are reviewed under the rule of reason. 19

1. Dr. Miles: The Per Se Rule

Dr. Miles Medical Co. v. John D. Park & Sons Co.20 is the basis of much of the current academic criticism of the Supreme Court's RPM approach.2 ' The plaintiff Dr. Miles, a medicine manufacturer, required its wholesalers and retailers to adhere to a minimum resale price schedule. The plaintiff also required its wholesalers to maintain control over the retailers' subsequent resale prices. The defendant Park & Sons, a wholesaler that refused to purchase from Dr. Miles under the minimum price contract, bought Dr. Miles' medicines from third parties and resold them below the plaintiff's price schedule. The plaintiff charged the defendant with inducing the plaintiff's distributors to breach their contracts by reselling to a price cutter.22 The Court denied the plaintiff's request for relief and held that the plaintiff's contract provision was void under common law and the Sherman Act. 3

After determining that the agreement between Dr. Miles and its vendees fulfilled the duality requirement of the Sherman Act,24 the Court found that the plaintiff's resale price schedule eliminated competition by controlling the price at which all purchasers received the product.25 The Court refused to accept the defendant's argument that producers of patented products have a right ordinary sellers do not have-the right to dictate the destiny of their products.26 The Court inquired whether the plaintiff had a right to restrain trade. The Court held that generally a right to control alienation does not exist without an agreement.2 7 Applying the common-law rule that contractual restraints on alienation must be reasonable and limited to the necessity of the circumstances, 2 the Court found that Dr. Miles' agreement did not fit any of the common forms of acceptable restraints.29

The Court's final inquiry was whether the benefits that the plaintiff gained from its pricing restrictions were entitled to more protection than the property rights that the defendants had in the medicine.30 The Court's response to this issue forms the heart of the per se rule.31 [[BEGIN FOOTNOTE 31]] 31. Per se rules prohibit certain conduct without inquiry into possible justifications for the conduct. Courts impose per se rules when the interests of judicial economy outweigh other interests. See Note, Fixing the Price Fixing Confusion: A Rule of Reason Approach, 92 YALE L.J. 706, 708 (1983). [[END FOOTNOTE 31]] Although the Court never explicitly condemned all vertical price fixing agreements, it found that the effects of the Dr. Miles scheme were the same as the effects that could result from horizontal price fixing at the dealer level. The Court, therefore, held that both kinds of price fixing were illegal.3 2 The Supreme Court's focus on the effects of the alleged violative activity, without regard to its purposes or benefits, is characteristic of other Supreme Court per se decisions. 3

#### VOTE NEG

#### FIRST---Ground---balancing tests devastate core links, because they allow the practice when it’s beneficial. AND, creates a moving target, because the disallowed behavior is context-dependent.

#### SECOND---Bidirectionality---rule of reason creates legally protected practices

### 1NC---Advantage CP

#### The United States federal government should

[Set 1]

* Expand the Child and Earned Income Tax Credits
* Reduce payroll taxes and increase capital gains taxes
* Create a wealth tax
* Keep the estate tax
* Impose a Value Added Tax
* Create automatic tax cuts and unemployment benefits
* Provide tax credits for Research and Development
* Provide universal early childhood education and increase support for childcare
* Provide college tax credits
* Expand Pell Grants
* Implement tuition free community college with vocational programs
* Raise the minimum wage
* Invest in job creation programs
* Ease restrictions in the formation of unions
* Develop classification and benefit systems for temporary, part-time, on-call, and self-employment jobs
* Create a federal job guarantee
* Expand Trade Adjustment Assistance.

[Set 2]

* Utilize positive inducements to encourage the Philippines to adopt a Worker Welfare Standard,
* Alter the text of the Trans-Pacific Partnership to replace ‘consumer welfare’ with ‘worker welfare,’

[Set 3]

* And increase its technical and financial assistance to the Philippines and other Southeast Asian countries for the improvement of maritime domain awareness.

#### Set 1 solves economic inequality

**Bhatt et al. 20** , Anjali Bhatt is a PhD student at Stanford. Melina Kolb has an MS in Journalism from Northwestern and a BA in anthropology from UChicago. Oliver Ward is a digital content producer for PIIE. Citing economists Hilary Hoynes (University of California Berkeley), Laura D’Andrea Tyson (University of California Berkeley), Gabriel Zucman (University of California Berkeley), Emmanuel Saez (University of California Berkeley), Stefanie Stantcheva (Harvard University), Jason Furman (PIIE), Richard Freeman (Harvard University), and William Darity Jr. (Duke University). (Anjali Bhatt, Melina Kolb, and Oliver Ward, 10/17/2020, “How to Fix Economic Inequality?” *Peterson Institute for International Economics*, <https://www.piie.com/microsites/how-fix-economic-inequality> Date Accessed: 9/23/2021)

This menu of policy recommendations is focused on the United States, with some also applicable to other advanced economies. It represents some commonly cited solutions by inequality experts, organized by policies related to taxes, education, labor, corporate regulations, and the social safety net. Economics can provide some guidance over which approach is most effective, but political attitudes toward inequality will play a significant role in which ones to focus on.

TAX POLICIES

“We have shed our blood in the glorious cause in which we are engaged; we are ready to shed the last drop in its defense. Nothing is above our courage, except only (with shame I speak it) the courage to tax ourselves.”

Expand the Child Tax Credit (CTC) and the Earned Income Tax Credit (EITC).

The Child Tax Credit provides a $2,000 per child tax credit for parents but excludes the lowest earners, i.e., those with the smallest tax bills, from receiving the full credit. Parents without taxable income cannot claim this refund.

Making the CTC fully refundable would allow the lowest earning families, including those without an income, to claim the full imbursement. Such a change would function as a child allowance available to those with earnings under a certain threshold. This step would be an effective way of reducing childhood poverty.

The Earned Income Tax Credit is calculated based on the number of dependents (children) and work status. It has been effective at reducing poverty since its enactment in 1975. Periodic increases in the program’s disbursements have improved child educational and health outcomes [and increased employment](https://www.cbpp.org/research/federal-tax/eitc-and-child-tax-credit-promote-work-reduce-poverty-and-support-childrens) among single parents. Expanding the program would further reduce poverty while encouraging work.

Hilary Hoynes (University of California Berkeley) estimates in a [National Academy of Sciences report](https://www.nap.edu/read/25246/chapter/1) that an investment of $90 billion to $100 billion a year in expanding existing policies—such as EITC, Child and Dependent Care Tax Credit, housing vouchers, and food assistance—would cut child poverty in half.

Shift taxes toward capital and away from labor to encourage hiring workers.

Laura D’Andrea Tyson (University of California Berkeley) suggests reducing payroll taxes to ease the burden on workers and taxing capital gains (profit from the sale of an asset like a stock or bond) at the same rate as personal income or higher. She also suggests that local governments agree not to compete against each other in a race to provide ever more expensive tax breaks for corporations to locate there. There are also growing calls for cross-country coordination to tax “mobile” stateless capital income.

Create a wealth tax.

Adjusting the top marginal tax rate alone would [not increase](https://www.youtube.com/watch?v=tSzes1P0NIM&feature=emb_title) the effective tax rate on the superrich, argues Gabriel Zucman (University of California Berkeley). Incomes are only a very small fraction of their wealth. Many billionaires accumulate their wealth through shares and other assets, which are subject to capital gains taxes, rather than income taxes.

Two former 2020 presidential candidates, Senators Elizabeth Warren and Bernie Sanders, backed taxing wealth directly. Their wealth tax plans sought to tax the net wealth, the assets held minus debts, of the richest citizens on an annual basis. Supporters of a wealth tax, including Emmanuel Saez (University of California Berkeley) and Zucman, contend that it would curtail the power of the superrich while funding valuable programs to help those in need. Other experts, such as Lawrence Summers (Harvard University), [argue](https://www.youtube.com/watch?v=oUGpjpEGTfE&feature=youtu.be&t=1200) it is impractical because calculating individual wealth (real estate, possessions) is problematic, and wealth can be shifted abroad. Still others say a wealth tax may be unconstitutional and note that it has been difficult to implement in Europe.

Keep the estate tax.

Taxing inheritances with an estate tax has been a feature of US tax policy since the Civil War. Proponents of the tax, which is levied on the wealth of the deceased (including real estate, stocks and bonds, cash, and other assets) before it is passed on to their heirs, see it as a tool to address inherited economic inequality and incentivize spending over holding wealth. Opponents deride it as a “death tax” that prevents family farms and small businesses from being transferred to heirs.

Stefanie Stantcheva (Harvard University) finds the estate tax is often misunderstood. The American public vastly overestimates how many families are over the exemption threshold—that is, how many families actually pay the estate tax. The exemption threshold has been raised over the years (from [$3.5 million in 2009 to $11.58 million in 2020](https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax)), so in reality only 1 in 1,000 US households have estates above the exemption level. Stantcheva suggests that informing the public about the threshold and the small number of estates that would be taxed would increase support for the estate tax.

Impose a value-added tax (VAT).

Many advanced industrial economies impose a value-added tax (VAT), which is like a retail sales or consumption tax but collected at each stage of production of goods and services and harder to evade. VATs raise significant revenue in countries that use it, but the financial costs are borne more heavily by low-income consumers since they spend a higher percent of their income on taxable goods. To combat inequality, advocates say that products that take up a larger share of low-income family expenditures, like food, should be exempted from the VAT. Also, revenues generated from the tax could be used for government aid programs or direct cash transfers.

Create automatic tax cuts and unemployment benefits.

Policymakers should set up automatic tax cuts and benefits, known as automatic stabilizers, in the United States that kick in when the unemployment rate rises above a certain threshold in a given time period, instead of having to draw up new legislation that has to pass through Congress every time there is a downturn. Unemployment benefits could also start automatically during recessions.

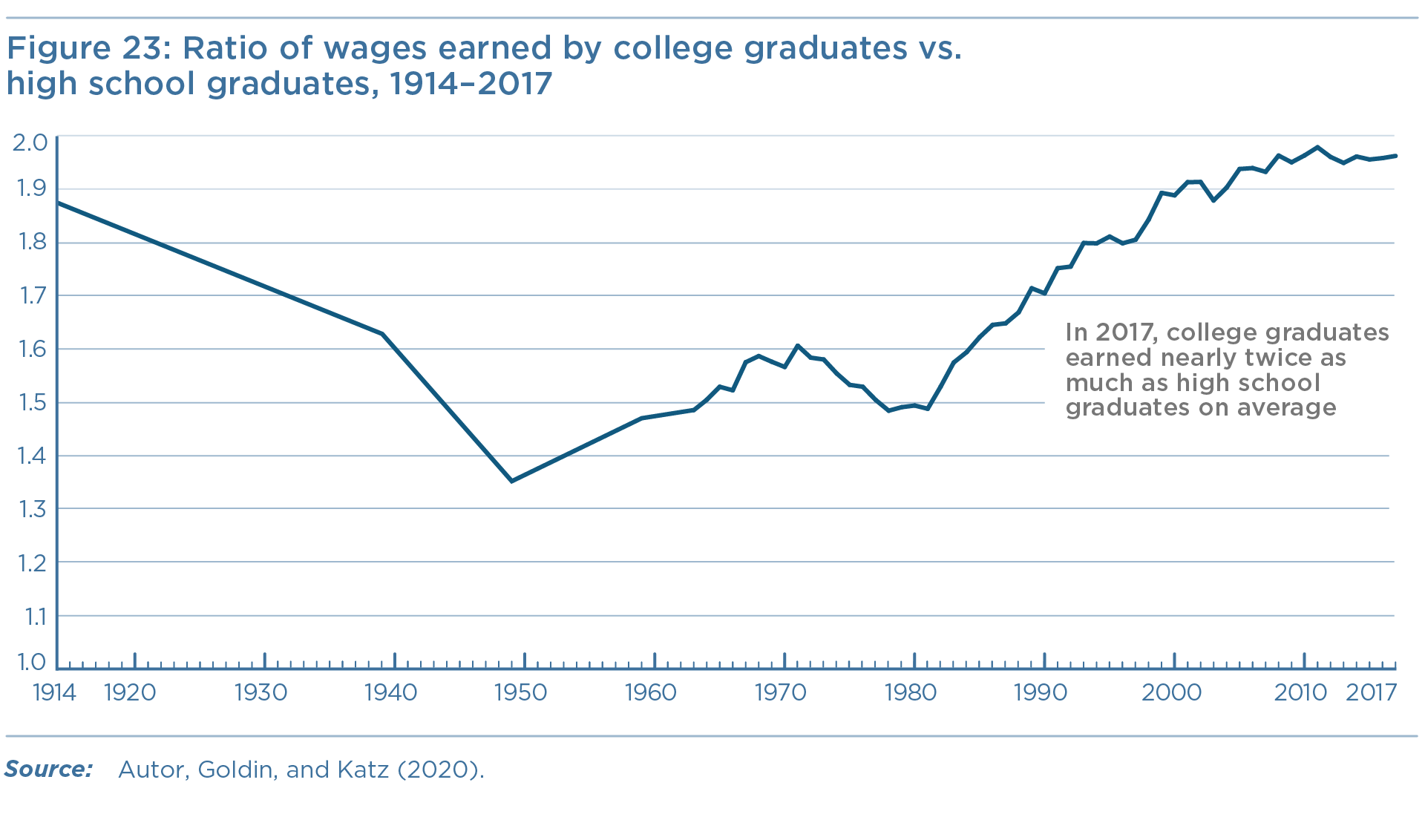
Provide tax credits for more research and development (R&D).

Support for R&D, in the form of investment or tax credits, would spur job creation and raise wages through increased productivity. As new fields emerge there will be more training opportunities. Federal R&D could be more directed away from military and toward economic development. Climate change has been identified as a national security threat and defense spending could be invested in R&D to combat and/or adapt to climate change, which would create jobs as well.

EDUCATION POLICIES

Provide universal early childhood education and increase support for childcare.

Government-provided universal preschool education and childcare could financially benefit low-skilled and low-income workers and help keep women in the workforce. The COVID-19 crisis has heightened the need for sustained, increased public investment in childcare, as many working women disproportionately have left the workforce to take on care responsibilities. Investing in and increasing publicly funded childcare is also a way to create jobs that cannot be automated.



Improve access to quality higher education.

Making quality public higher education more accessible to more people is one important way to boost incomes. Many policies have been put forward to address this: tax credits to offset college costs; expanding grants and providing reduced or free tuition for low-income students (i.e. Pell grants); a national service program to allow students to earn money that can be put toward education; canceling outstanding loans based on income, time passed, or amount repaid; providing grants to colleges and universities to give more scholarships; or even cancelling tuition entirely. The debate continues over which schools any of these policies should apply to—community colleges and other 2-year degree programs, all public colleges, all 2- and 4-year programs, private schools, etc.

Germany has made almost all programs at public universities tuition-free for domestic and international students.

Provide more job training.

Improving access to low-tuition and tuition-free community colleges and vocational and apprenticeship programs would help prepare young people for new jobs in technology, health care, and other expanding fields that require learned skills. Sectoral training programs can raise earnings 20 to 40 percent, says Lawrence Katz (Harvard University). State and local governments can supplement federal programs in this area: 11 states in the United States have already implemented tuition-free community college, says Laura D’Andrea Tyson (University of California Berkeley). Programs must combine on-the-job training with more general occupation-specific knowledge to build a flexible workforce that can adapt to changing technologies and is receptive to retraining.

Implement talent discovery and matching programs.

Identifying talent in low-income areas and giving them access to educational and training opportunities would improve social mobility. Talent matching programs could link people with a specific set of skills with jobs they can pursue in the long term.

LABOR POLICIES

Raise the federal minimum wage and wages for essential low-paying jobs.

Raising the federal minimum wage would help the lowest paid workers in states that have not already introduced their own higher minimum wages. Opponents say raising the minimum wage would burden employers and reduce the number of jobs available, but [several](https://escholarship.org/uc/item/86w5m90m) [studies](https://northstar-www.dartmouth.edu/~pwolfson/Belman-Wolfson-What-Does-the-MW-Do-Conclusion.pdf) find there is little effect on employment.

Jobs in childcare, nursing, elder care, food service, and healthcare are vital to society, but they pay poorly with little to no opportunities for advancement. Workers in these fields need higher wages and career progression opportunities to raise social mobility. These jobs are also less susceptible to automation.

Enforce existing minimum wage laws.

Some employers evade minimum wage laws by classifying employees as independent workers, deducting company costs from wages (for example, taking the cost of a uniform from an employee’s pay), failing to pay overtime, and through other forms of wage theft. One [study](https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/) suggests that the total wages US employers steal by violating minimum wage and other labor laws exceeds $15 billion each year. More resources to combat wage theft and incentives for compliance would help.

Increase government investment in job creation programs.

Fiscal and monetary stimulus—more government investment in job-creating projects—can be more effective than specific government transfer programs to spur a [“hot economy”](https://www.piie.com/blogs/realtime-economic-issues-watch/benefits-hot-economy) that pushes wages up faster than prices, according to Jason Furman (PIIE). Governments can also spend on infrastructure or other programs to generate employment (which was done during 2009-10), supplement worker income, or train workers for jobs, as programs did during the Great Depression.

Give employees more bargaining power at companies.

Richard Freeman (Harvard University) calls trade unions the one “institutional force that fights against inequality.” Several experts point out that as US union membership has fallen, worker bargaining power has declined. As a result, growth in labor productivity has benefitted mainly top wage earners. Easing restrictions on the formation of unions would help. Daron Acemoglu (MIT) says corporations should have nonexecutive workers serve on their boards, the way some German companies do.

Many experts advocate for empowering unions to bargain for better compensation, benefits, access to training, and education. A recent [Business Roundtable initiative](https://opportunity.businessroundtable.org/ourcommitment/) recommends that big companies make commitments to all stakeholders, including workers and customers, not just investor shareholders.

Protect workers in the “gig economy” and other alternative work arrangements.

Shifts in technology and labor arrangements, such as temporary, part-time, on-call, and self-employment jobs, have sometimes disadvantaged workers. Firms are incentivized to hire or classify existing workers as independent contractors because they do not have to provide them with traditional labor protections and worker benefits. The government can develop universal and portable systems that give social protections and benefits for these workers and prevent worker misclassification.

Create a federal job guarantee.

The federal government can become the employer of “last resort” through a National Investment Employment Corps spending $750 billion to $1.5 trillion while eliminating the need for some antipoverty programs, argues William Darity Jr. (Duke University). A federal job guarantee would cut inequality by lifting the lowest earners and protecting employment opportunities for groups subject to discrimination.

Richard Freeman (Harvard University) maintains that a federal job guarantee could have [been effective](https://www.jacobinmag.com/2020/03/unemployment-richard-freeman-recession-labor-market) at managing the economic shock of the COVID-19 crisis. It could have put newly unemployed workers to work on critical government projects, such as contact tracing, at a wage above the poverty level. As economies rebuild, the federal government can facilitate access to labor through job programs that expand during periods of economic slowdown and shrink during periods of private sector job growth. The same can be said of the need for climate-related labor—federal governments can provide jobs to work on critical green projects.

Expand Trade Adjustment Assistance beyond trade-affected workers.

Trade Adjustment Assistance (TAA) is much criticized as ineffective, but those who received training through the program enjoyed [substantial increases in earnings](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3155386.). The program falls short because of its limited scope—it only helps workers demonstrably hurt by trade, not by technology or other factors beyond their control. Removing the conditions and expanding the TAA program to include workers displaced by automation and other factors would deliver the program’s benefits to a wider group of recipients.

#### Set 2 solves — positive inducements work with the Philippines better than the aff.

Chang 93, Professor of Law, Seoul National University; Co-President, Asia Pacific Regional Arbitration Group; President, Korean Council for International Arbitration; Alternate Member, ICC International Court of Arbitration, Expert witness on Korean Laws in international arbitration and court proceedings, Harvard Law School (LLM, 1992 and SJ.D. 1994); Seoul National University (LL.B. 1985 and LL.M. 1991) (Seung Wha Chang, 1-1-1993, “Extraterritorial Application of U.S. Antitrust Laws to Other Pacific Countries: Proposed Bilateral Agreements for Resolving International Conflicts within the Pacific Community,” Hastings International and Comparative Law Review, Vol. 16, No. 3)

\*blocking statutes refers to barriers to applying US antitrust in foreign countries

V. CONCLUSION

For the last decade, extraterritorial application of U.S. antitrust laws has resulted in continued international conflict between the U.S. and its trading partners, including the Pacific Countries. These conflicts stem mainly from the complaints of the other Pacific Countries about the long-arm jurisdiction of the U.S. courts based upon the "effects doctrine" and the treble damage remedy available in private U.S. antitrust cases. Several Pacific Countries have responded by legislating retaliatory blocking statutes. The domestic efforts of the U.S. to resolve these international conflicts are significantly limited due to their unilateral nature. Diplomatic negotiations resulting in bilateral treaties offer the best solution. In order to enhance their feasibility, such bilateral agreements should be based upon reciprocity and balancing of the parties' national interests. For this reason, any agreement should include provisions affecting both the U.S. antitrust laws and the blocking statutes of other Pacific Countries. This Article recommends that the U.S. accept proposals for the allocation of jurisdiction rules and the elimination of treble damage recovery in antitrust cases involving foreign commerce. In exchange, other Pacific Countries are encouraged to repeal or to cease invoking their blocking statutes.

#### Set 3 solves — MDA solves terror, food security, piracy, and southeast Asian instability

Poling 21 (Gregory B. Poling, Senior fellow for Southeast Asia and director of the Asia Maritime Transparency Initiative at the Center for Strategic and International Studies (CSIS). “From Orbit t om Orbit to Ocean—Fixing Southeast Asia o Ocean—Fixing Southeast Asia’s Remote-Sensing s Remote-Sensing Blind Spots” *Naval War College Review* 74(1), Winter 2021, https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=8165&context=nwc-review)

There is no greater security need in Southeast Asia than improved MDA. Saving dwindling fish stocks, dismantling trafficking networks, preventing the spread of Islamic State–linked terror cells, countering Chinese aggression in the South China Sea—meeting these and many other challenges is impossible without much better ability to detect, identify, and track vessels at sea. Yet regional states historically have underinvested in patrol and sensing capabilities in both naval and law-enforcement agencies. They also have proved very resistant to information sharing, both within and among countries. This is changing slowly, in places such as the Sulu Sea and the Strait of Malacca, but much more work is needed. Improving MDA in Southeast Asia also is critical to the national-security interests of the United States and other outside parties. The South China Sea is a primary theater of U.S.-China competition, and the inability of other claimants to monitor Beijing’s activities effectively is one of the foremost challenges in these waters. Poor MDA makes Southeast Asia a continuing hot spot for trafficking, piracy and maritime crime, and transnational terrorism. And rapidly depleting fish stocks threaten the livelihoods of tens of thousands, the food security of millions, and potentially the stability of governments in this critical region.

### 1NC---FTC DA

#### Law Enforcement Tradeoff DA

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

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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

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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.

### 1NC---Politics DA

#### Infrastructure negotiations will succeed now---PC is key

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President Joe Biden and his top aides scrambled Thursday to break a [deadlock](https://www.nbcnews.com/politics/congress/house-braces-infrastructure-vote-progressive-democrats-vow-block-n1280379) between House and Senate Democrats in what could be a last-ditch effort to save a key piece of his domestic political agenda. Biden spent the day at the White House out of public view making calls to Democratic leaders and other members of Congress as staff members went in and out of the Oval Office to update him on talks, White House press secretary Jen Psaki said. The White House was taking the situation "hour by hour," and Biden had cleared his schedule to focus on the [negotiations](https://www.nbcnews.com/politics/congress/mutually-assured-destruction-house-liberals-dig-halting-infrastructure-bill-n1280275), she said. "We are working towards winning a vote tonight. We have several hours left in the day," Psaki said Thursday afternoon, referring to the day's deadline as "self-imposed." Biden is at risk of losing momentum on the $550 billion infrastructure bill, along with a wider $3.5 billion social spending package. Both were central campaign promises, and they are the focus of his domestic policy agenda. With time running out on the legislative calendar for Biden's first year, White House officials have acknowledged that they are at a pivotal moment, with their domestic agenda likely to face even more hurdles next year, when members of Congress shift attention to their re-election bids. The infrastructure bill, which [passed the Senate last month](https://www.nbcnews.com/politics/congress/senate-vote-massive-infrastructure-package-centerpiece-biden-agenda-n1276134), is opposed by dozens of progressive Democratic in the House, who say they want progress on the separate $3.5 trillion measure to fund a range of social safety net programs. But the larger spending bill lacked the 50 votes it needed in the Senate, with Democrats Joe Manchin of West Virginia and Kyrsten Sinema of Arizona coming out in opposition. White House officials said Biden has made significant efforts in recent days to win support from Manchin and Sinema, who met with him separately at the White House on Tuesday for the second time in a week. Top White House officials also met with Sinema on the Hill on Wednesday, while Biden met at the White House that afternoon with Senate Majority Leader Chuck Schumer, D-N.Y., and House Speaker Nancy Pelosi, D-Calif. Fellow Democrats have criticized Biden for not doing more to put pressure on the senators, such as accusing them of threatening to topple his and the party's agendas. Psaki has said Biden, who spent 36 years in the Senate, does not believe that would be effective. "I don't know if you've met many senators. They're not going to be forced to do anything that's not in their interest," Psaki said Wednesday. "His view is we've made some progress. You've seen some members come down. You've seen some members come up. You've seen active negotiations," she said. White House officials in recent days have said that despite the apparent impasse, they believe progress is being made behind the scenes as the various sides continue to talk. Biden canceled a trip to Chicago on Wednesday in part because he felt negotiations were making progress and he needed to stay in Washington to them keep on track, a White House official said.

#### Antitrust reform trades off

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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.

#### Solves grid collapse – immediate action is key to mitigate growing risks

Pittsburgh Post-Gazette 3-4-2021 (“Invest in Infrastructure,” <https://www.post-gazette.com/opinion/editorials/2021/03/05/Invest-in-infrastructure/stories/202102270028>)

Now is the time for a reckoning, a realization: While it’s important to study the past to avoid repeating the same mistakes, the country must also look to its future and see the obvious — that America’s infrastructure as a whole needs some serious upkeep. Democrats and Republicans alike have flirted with the idea of a sweeping infrastructure bill in recent years, and President Joe Biden’s team is working to outline such legislation. These efforts should proceed swiftly — now is the time for Congress to invest in infrastructure, not only to help prevent crises, but also to jump-start an economy mired in the coronavirus pandemic. Despite being one of the richest countries in the world, the U.S. seems constantly to hover on the edge of disaster, with news of natural forces smashing through power grids and levies and fire prevention strategies on a yearly or monthly basis. Texas is only the most recent state to have been pushed over the edge. The American Society of Civil Engineers just this week gave America’s infrastructure an overall grade of C-minus in its quadrennial report card. The last grade was D-plus and that report cited decades of underfunding and unheeded recommendations. C-minus is an improvement but deserves not just federal attention but actual intervention. The report notes “we are heading in the right direction, but a lot of work remains.” There is opportunity in the recent economic and environmental devastation that grabs headlines and breaks hearts. In the aftermath of the Great Depression, the government put millions to work improving parks and building roads and bridges and airports. President Dwight Eisenhower’s interstate highway system remains the life veins of interstate travel. A new and vigorous infrastructure package for America would fix what needs to be fixed and offer the promise of an economic boon. The purpose of the federal government is to address the needs of American society in a way that can’t be tackled by states in a piecemeal fashion. What has happened in recent days within The Lone Star State demonstrates keenly that this is the time — actually past the time — that our federal leaders must shore up the foundations of our federation. Congress should act swiftly to lead states in reversing the entropy chewing away at America’s foundations. Until this happens, society stands on shifting sands.

#### Grid collapse kills hundreds of millions and eliminates adaptation to societal stressors

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Societies and nations are examples of large-scale, complex social-physical systems. Thus, societal resilience can be defined as the ability of a nation, population, or society to anticipate and prepare for major stressors or calamities and then to absorb, adapt to, recover from, and restore normal functions in the wake of such events when they occur. A nation’s dependence on its Critical Infrastructure systems, and the resilience of those systems, are therefore major components of national and societal resilience. There are a variety of events that could deal crippling blows to a nation’s Grid, Critical Infrastructure, and social fabric. The types of catastrophes under consideration here are “very bad day” scenarios that might result from severe GMDs induced by solar CMEs, HEMP attacks, cyber attacks, etc.5 As briefly discussed in Sec. III.C, the probability of a GMD of the magnitude of the 1859 Carrington Event is now believed to be on the order of 1%/year. The Earth narrowly missed (by only several days) intercepting a CME stream in July 2012 that would have created a GMD equal to or larger than the Carrington Event.41 Lloyd’s, in its 2013 report, “Solar Storm Risk to the North American Electric Grid,” 42 stated the following: “A Carrington-level, extreme geomagnetic storm is almost inevitable in the future…The total U.S. population at risk of extended power outage from a Carrington-level storm is between 20-40 million, with durations of 16 days to 1-2 years…The total economic cost for such a scenario is estimated at $0.6-2.6 trillion USD.” Analyses conducted subsequent to the Lloyd’s assessment indicated the geographical area impacted by the CME would be larger than that estimated in Lloyd’s analysis (extending farther northward along the New England coast of the United States and in the state of Minnesota),43 and that the actual consequences of such an event could actually be greater than estimated by Lloyd’s. Based on “Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack: Critical National Infrastructures” to Congress in 2008 (Ref. 39), a HEMP attack over the Central U.S. could impact virtually the entire North American continent. The consequences of such an event are difficult to quantify with confidence. Experts affiliated with the aforementioned Commission and others familiar with the details of the Commission’s work have stated in Congressional testimony that such an event could “kill up to 90 percent of the national population through starvation, disease, and societal collapse.” 44,45 Most of these consequences are either direct or indirect impacts of the predicted collapse of virtually the entire U.S. Critical Infrastructure system in the wake of the attack. Last, recent analyses by both the U.S. Department of Energy46 and the U.S. National Academies of Sciences, Engineering, and Medicine47 have concluded that cyber threats to the U.S. Grid from both state-level and substatelevel entities are likely to grow in number and sophistication in the coming years, posing a growing threat to the U.S. Grid. These three “very bad day” scenarios are not creations of overzealous science fiction writers. A variety of mitigating actions to reduce both the vulnerability and the consequences of these events has been identified, and some are being implemented. However, the fact remains that events such as those described here have the potential to change life as we know it in the United States and other developed nations in the 21st century, whether the events occur individually, or simultaneously, and with or without coordinated physical attacks on Critical Infrastructure assets.

### 1NC---Cap K

#### The 1AC is based in free-market logics that uphold and save capitalism

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Antitrust laws have historically been associated with countries that possess a free-market capitalist economy, which is understood as an economic system in which competition and the market forces of demand and supply determine economic outcomes. This historical association between capitalism and antitrust laws is evident from the fact that the countries that first adopted national antitrust laws, such as Canada, the United States, and the countries of Western Europe, are countries that have long embraced a market economy. On the contrary, the statist economies of the erstwhile Soviet bloc and many developing countries, for the most part, did not institute antitrust laws of the type associated with free market economies. Notwithstanding these country examples, which indicate a positive association between a capitalist economic system and antitrust laws, there exist arguments that both support and oppose antitrust laws for a capitalist economy. Arguments in support of antitrust laws for a capitalist economy begin with the fundamental understanding that the most important ingredient of a capitalist system is market competition. The presence of a competitive market is vital to achieving the efficiency levels that a capitalist economy seeks. Therefore, competitive forces need to be protected to discipline the market players, especially the dominant ones. By preventing and punishing anticompetitive practices by market players, an antitrust law protects and promotes market competition. 1 In the United States, which is commonly understood to be the leading bastion of free-market capitalism and one of the first countries to enact an antitrust law, the role of antitrust legislation in preserving the capitalist character of its economic system is underscored by the near-constitutional status accorded to its antitrust statues by the U.S. Supreme Court. 2 The Court described these statutes as “the Magna Carta of free enterprise” and “as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”3 Such a sentiment is appropriate, given that the American antitrust law, the Sherman Act, was passed in 1890 to protect economic competition from rapidly-growing “trusts.”4 While the social and political zeitgeist has changed considerably since the passing of the Sherman Act, the fact remains that antitrust is perceived as key to “protecting consumers against anticompetitive conduct that raises prices, reduces output, and hinders innovation and economic growth.”5 Moreover, it is understood that “competition is a public good, and society cannot expect the victims of anticompetitive conduct to protect themselves.”6 The implication therefore is that government power, through the enforcement of antitrust statutes, is critical to reining in corporate power in order to protect economic competition and capitalism.

#### Extinction---try-or-die for transition

Foster 19, Sociology Professor @ Oregon (John Bellamy, February 1st, “Capitalism Has Failed—What Next?” *The Monthly Review*, Volume 70, Issue 9, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>, Accessed 06-30-2021)

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war. To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3 Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7 The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13 Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15 In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18 At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21 More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet. Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23 The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers. Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27 War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29 Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30 More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35 The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38 If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40 Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

#### Reject the aff and critically interrogate neoliberal discourse

Giroux 20, McMaster University Professor for Scholarship in the Public Interest and The Paulo Freire Distinguished Scholar in Critical Pedagogy (Henry, June 9th, “Racist Violence Can’t Be Separated from the Violence of Neoliberal Capitalism,” *Truthout*, <https://truthout.org/articles/racist-violence-cant-be-separated-from-the-violence-of-neoliberal-capitalism/>, Accessed 08-24-2021)

Neoliberalism and its regressive notion of individualism and individual responsibility has undermined the belief that human beings both make the world and can change it. The pandemic has ushered in a crisis that undermines that belief and opens the door for rethinking what kind of society and notion of politics will be faithful to the creation of a socialist democracy that speaks to the core values of justice, equality and solidarity. Under such circumstances, private resistance must give way to collective resistance, and personal and political rights must include economic rights. If inequality is to be defeated, the social state must replace the corporate state and social rights must be guaranteed for all. There can be no adequate struggle for economic justice and social equality unless economic inequality on a global level is addressed along with a movement for climate justice, the elimination of systemic racism and a halt to the spiraling militarism that has resulted in endless wars. This can only take place if the anti-democratic ideology of neoliberalism, with its collapse of the public into the private and its institutional structures of domination, are fully addressed and discredited. Étienne Balibar is right in stating that the triumph of neoliberalism has resulted in the “death zones of humanity.” Following Balibar, what must be made clear is that neoliberal capitalism is itself a pandemic and a dangerous harbinger of an updated fascist politics.

Overcoming Pandemic Pedagogy

The kind of societies that will emerge after the pandemic is up for grabs. In some cases, the crisis will give way to authoritarian regimes such as Chile, Hungary and Turkey, all of which have used the urgency of COVID-19 as an excuse to impose more state control and surveillance, squelch dissent, eliminate civil liberties and concentrate power in the hands of an authoritarian political class. As is well documented, history in a time of crisis also has the potential to change dominant ideologies, rethink the meaning of governance, and enlarge the sphere of justice and equality through a vision that fights for a more generous and inclusive politics. It is crucial to rethink the project of politics in order to imagine forms of resistance that are collective, inclusive and global, capable of producing new democratic arrangements for social life, more radical values and a “global economy which will no longer be at the mercy of market mechanisms.” This is a politics that must move beyond siloed identities and fractured political factions in order to build transnational solidarities in the service of an alternative radically democratic society. Making the pedagogical more political means challenging those forms of pandemic pedagogy that turn politics into theater, a favorite tactic of Trump. In this case, the performance works to suspend disbelief, hold power accountable and unravel one’s sense of critical agency. Pandemic pedagogy does more than undermine critical thinking and informed judgments, it dissolves the line between the truth and lies, fantasy and reality, and in doing so, destroys the foundation for understanding, engaging and promoting that social and economic justice. The endgame under the rubric of a pandemic pedagogy is not simply the destruction of the truth, but the elimination of democracy itself. Central to developing an alternative democratic vision is development of a language that refuses to look away and be commodified. Such a language should be able to break through the continuity and consensus of common sense and appeals to the natural order of things. At stake here is the need to reclaim both critical and redemptive elements of a radical democracy in order to address the full spectrum of violence that structures institutions and everyday life in the United States. This is a language connected to the acquisition of civic literacy, and it demands a different regime of desires and identifications to enable us to move from “shock and stunned silence toward a coherent visceral speech, one as strong as the force that is charging at us.” Of course, there is more at stake here than a struggle over meaning; there is also the struggle over power, over the need to create a formative culture that will produce informed critical agents who will fight for and contribute to a broad social movement that will translate meaning into a fierce struggle for economic, political and social justice. Agency in this sense must be connected to a notion of possibility and education in the service of radical change. Reimagining the future only becomes meaningful when it is rooted in a fierce struggle against the horrors and totalitarian practices of a pandemic pedagogy that falsely claims that it exists outside of history. Václav Havel, the late Czech political dissident-turned-politician, once argued that politics follows culture, by which he meant that changing consciousness is the first step toward building mass movements of resistance. What is crucial here in the age of multiple crises is a thorough grasp of the notion that critical and engaged forms of agency are a product of emancipatory education. Moreover, at the heart of any viable notion of politics is the recognition that politics begins with attempts to change the way people think, act and feel with respect to both how they view themselves and their relations to others. There is more to agency than the neoliberal emphasis on the “empire of the self,” with its unchecked belief in the virtues of a form of self-interest that despises the bonds of sociality, solidarity and community. The U.S. is in the midst of a political and pedagogical crisis. This is a crisis defined not only by a brutalizing racism and massive inequality, but also a constitutional crisis produced by a growing authoritarianism that has been in the making for some time. The recent attacks by the police on journalists, peaceful protesters and even elderly people marching for racial justice echoes the violence of the Brownshirts in the 1930s. Let’s stop the futile debate about whether or not the U.S. is in the midst of a fascist state and shift the register to the more serious question of how to resist it and restore a semblance of real democracy. Under such circumstances, education should be viewed as central to politics, and it plays a crucial role in producing informed judgments, actions, morality and social responsibility at the forefront not only of agency, but politics itself. In this scenario, truth and politics mutually inform each other to erupt in a pedagogical awakening at the moment when the rules are broken. Taking risks becomes a necessity, self-reflection narrates its capacity for critically engaged agency and thinking the impossible is not an option, but a necessity. Without an informed and educated citizenry, democracy can lead to tyranny, even fascism. Trump represents the malignant presence of a fascism that never dies and is ready to remerge at different times in different context in sometimes not-so-recognizable forms. The COVID-19 crisis and the pandemic of inequality and racism have revealed elements of a fascist politics that are more than abstractions. The struggle against a fascist politics is now visible in the rebellions taking place across the United States. While there are no political guarantees for a victory, there is a new sense that the future can be changed in the image of a just and sustainable society. There is a new energy for reform taking place in the aftermath of the killing of George Floyd. Massive protests for racial, economic and social justice are emerging all over the globe. As I have argued in The Terror of the Unforeseen, at stake here is the need for these protests to transition from a pedagogical moment and collective outburst of moral anger to a progressive international movement that is well organized and unified. Such a movement must build solidarity among different groups, imagine new forms of social life, make the impossible possible, and produce a revolutionary project in defense of equality, social justice and popular sovereignty. The racial, class, ecological and public health crisis facing the globe can only be understood as part of a comprehensive crisis of the totality. Immediate solutions such as defunding the police and improving community services are important, but they do not deal with the larger issue of eliminating a neoliberal system structured in massive racial and economic inequalities. David Harvey is right in arguing that the “immediate task is nothing more nor less than the self-conscious construction of a new political framework for approaching the question of inequality, through a deep and profound critique of our economic and social system.” This is a crisis in which different threads of oppression must be understood as part of the general crisis of capitalism. The various protests now evolving internationally at the popular level offer the promise of new global anti-fascist and anti-capitalist movements. In the current moment, democracy may be under a severe threat and appear frighteningly vulnerable, but with young people and others rising up across the globe — inspired, energized and marching in the streets — the future of a radical democracy is waiting to breathe again.

## Advantage 1

#### COVID crushed employer leverage.

Ro 7-31-2021, reporter @ Axios. (Sam, "1 big thing: The worker's job market", *Axios*, https://www.axios.com/workers-job-market-openings-hirings-firings-quits-wages-62461df6-116c-4b0c-8c8d-b0a22e53f7ba.html)

The unprecedented upheaval of a year-plus of pandemic life is playing out in the job market. Why it matters: The unemployment rate remains stubbornly high. At the same time, the Great Resignation has companies across the country trying desperately to hold on to staff as employees act on pent-up demand for job changes. The pandemic also led some people to relocate, and to rethink their careers and what they want out of life — contributing to a mismatch of available jobs to available workers. The result? Chaos. By the numbers: There are 6.7 million fewer Americans working now than there were before the pandemic. The unemployment rate is 5.9%, compared to 3.5% in February 2020. On the plus side, about 16 million net jobs have been filled since April 2020. Four metrics from the Bureau of Labor Statistics’ Job Openings and Labor Turnover Survey help paint the picture. Job openings are at a record high of 9.2 million. For every one opening, there is one unemployed American. This is a considerable improvement from April 2020 when there were five unemployed per opening. In response, businesses across all industries have been raising wages. A growing percentage of companies are advertising hiring incentives like cash signing bonuses. Hirings aren't even close to keeping pace with new job openings. In May, the ratio of hires to job openings fell to an all-time low of 0.64. Numerous factors are holding workers back, including concerns about the coronavirus, child care issues, comfortable financial safety nets, and the enhanced unemployment benefits that are currently rolling off on a state-by-state basis. There are also an estimated 1.7 million people who retired early during the pandemic. Layoffs and firings are at an all-time low. The more that companies struggle to hire, the less they are letting go of the workers they do have. In fact, it may be the case that workers are underestimating how much leverage they have with their employers. Quits are at record highs as workers seek out better opportunities. The share of departing workers (layoffs, firings, retirements, deaths) who quit is 67.8%, the second-highest ever. Quit rates are particularly high in lower-wage service jobs like those in the leisure and hospitality industries, which likely reflects some trading up to better positions. Between the lines: This optimism toward the labor market may seem to be in conflict with the fact that 9.5 million Americans identify as being unemployed. Federal Reserve Chair Jerome Powell addressed the topic during a press conference on Wednesday. Few people follow the labor market as closely as Powell, since one of the Fed's jobs is to help the economy achieve maximum employment. He said the real-world process for securing a job is a "time intensive, labor intensive process, and there may be a bit of a speed limit on that." The big picture: The balance of power in the labor market is unusually slanted in favor of workers, who are asking for raises, who are getting poached by competitors, who are switching careers, and in many cases who are just leaving the labor force altogether. The bottom line: The labor market wouldn’t be this favorable for workers if not for an economy that’s growing at such a high clip that there are shortages. As companies increasingly hire and continue to raise wages, that’s more money in the pockets of consumers who can spend it, perpetuating a virtuous cycle of economic growth.

#### Market concentration can’t explain inequality or wage stagnation, and antitrust won’t solve.

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This paper highlights some empirical findings from the new literature on the effect of labor and product market concentration on wages. We address three questions about market concentration that have not always been placed front and center in this literature. The first question is, “Does concentration adversely affect wages at a point in time?” The second question is, “Has concentration grown over time?” The third question is, “Can growing concentration by itself explain a significant portion of the change in wage trends in recent decades?” We find there is evidence to answer “yes” to the first and second questions but not the third. To be clear, the failure to answer affirmatively to the third question is not a criticism of these studies. The studies are not claiming that rising concentration alone can explain wage stagnation or inequality. Yet too many readers have taken these studies’ findings to this conclusion.

Finally, this paper makes two broader points about market power. First, market concentration is not the only source of power—particularly employer power—in markets. Second, even unchanged employer power (like that conferred by market concentration) can play a role in growing wage suppression and inequality if it is accompanied by a collapse of workers’ market power. The new literature on market concentration tells us a lot about employer power, but further exploration of what has happened to workers’ market power remains a key research agenda.

This paper highlights the need to tackle sluggish wage growth and rising inequality with a broad menu of policy interventions that go beyond those provided by competitive models to focus on employer and worker power, and even beyond the antitrust agenda suggested by focusing exclusively on market concentration.

Following are our key conclusions:

Labor market concentration is negatively correlated with wages, but the scope of its downward pressure on wages is limited.

New research shows that labor market concentration is negatively correlated with wages. However, the effect of labor market concentration is comparatively modest when scaled against what we consider the most significant wage trend in recent decades: the growing gap between typical (median) workers’ pay and productivity.

The new literature on market concentration has not yet provided concrete empirical estimates of a key labor market trend of recent decades—rising compensation inequality. This should be a priority for this research agenda in the future.

The new concentration literature does allow us to estimate the effect of market concentration on the share of overall income claimed by labor compensation. These estimates suggest that concentration has not risen enough, nor is its effect on labor’s share of income strong enough, to account by itself for an economically important share of the divergence between economywide productivity and the typical worker’s pay in recent decades.

The new research on labor market concentration implies that this concentration reduced wage growth by roughly 0.03 percent annually between 1979 and 2014, a decline that would explain about 3.5 percent of the total divergence between the median worker’s pay and economywide productivity over the same period.

One important study shows that the “average” labor market is “highly concentrated.” But differences between measures of concentration of the average labor market and the labor market experienced by the average worker have important implications for how to assess the impact of labor market concentration on long-term wage trends. In other words, many labor markets suffer from high degrees of concentration, but most people work in labor markets with only low-to-moderate degrees of concentration.

Nonetheless, labor market concentration is a particular challenge for rural areas and small cities and towns. This is an important finding for those looking to provide economic help to residents of those areas.

#### 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.

## Advantage 2

### Modeling Advantage — 1NC

#### No modeling---other countries see US antitrust as irrational, even if we get things right.

William E. Kovacic 15, Professor of Law and Policy at George Washington University, former General Counsel for the Federal Trade Commission, J.D. from Columbia University, “The United States and Its Future Influence on Global Competition Policy,” George Mason Law Review, Vol. 22, 2015, accessed via Lexis

One force that reduces the perceived legitimacy of the U.S. system is a widely accepted narrative, reflected in popular discourse and scholarly commentary, which portrays federal enforcement as irrational and unstable. 65 [\*1172] In this interpretation of modern U.S. enforcement history, antitrust policy undergoes recurring erratic shifts, with a small number of lucid intervals. For the most part, the irrationality narrative suggests that U.S. antitrust policy embraced unsupportable extremes of over-enforcement in the 1960s and 1970s, under-enforcement from 1981 to 1988 and 2001 to 2008, and achieved a sensible, balanced equilibrium only from 1993 to 2000 and 2009 to the present. 66 This accounting of antitrust history raises a troublesome question: why should any jurisdiction outside the U.S. respect a system that has lost its mind in roughly 41 of the past 55 years?

Policy-making in the irrationality narrative is sharply discontinuous, and the enforcement institutions have little evident capacity for self-assessment or correction over time. 67 Individual leaders count for everything, and institutional arrangements fail to discipline policy-making; 68 appoint a wise official and you get good results, but pick a zealot and the agency swerves toward frantic hyperactivity or utter indolence. The irrationality narrative is the public policy equivalent of an interpretation of Formula One racing that attributes the outcome in races entirely to the driver and treats the quality of the car and supporting team as largely irrelevant.

The irrationality account of U.S. enforcement history derives power from the stature of the narrators. Despite its unreliable reading of U.S. experience, the narrative's academic pedigree is daunting. Some of the greatest scholars in U.S. competition law have contributed to the story. If nonentities constructed the narrative, foreign observers would dismiss it out of hand. Instead, the narrative of irrationality and instability, often presented with the metaphor of a wildly swinging pendulum, originated and developed in the work of some of the field's most influential commentators. On many occasions outside the U.S., I have heard enforcement officials, practitioners, and scholars speak of the irrationality narrative as though it were an established truth. To these observers, the stature of the scholars who popularized the irrationality narrative invariably lends verisimilitude to the story.

As described below, the irrationality narrative of the U.S. system serves the aims of the right and the left in the debate about federal enforcement policy. For those who favor more intervention or less intervention, alike, the image of a system dangerously out of control serves to frame their own "sensible" policy proposals. By this technique, the narrator emerges as the voice of wisdom in a crazed policy environment.

[\*1173] The architecture of the modern irrationality narrative took shape in 1978 when Professor Robert Bork published the first edition of his transformative treatise, The Antitrust Paradox. 69 Professor Bork's central thesis was that "modern antitrust has so decayed that the policy is no longer intellectually respectable." 70 Each institution with a role in the implementation of the antitrust laws--the courts, the Congress, and the federal enforcement agencies--caused the decay. On antitrust matters, the Congress displayed the mentality of "the sheriff of a frontier town" who "did not sift evidence, distinguish between suspects, and solve crimes, but merely walked the main street and every so often pistol-whipped a few people." 71 With few exceptions, the courts embraced a view of antitrust law that "teaches the necessity for government intervention when no such necessity exists, and even when intervention is positively harmful." 72 Without regard to adverse economic effects, the DOJ and the FTC "must continually press on to fresh territory, seeking theories that broaden the application of the law and make violations easier to establish." 73

In Professor Bork's telling, the implementing institutions were capricious, reckless, or bent upon self-aggrandizement. 74 As a group, the institutions have gone mad, for they have no tendency or, perhaps, any capacity to reflect on their experience, identify error, and make corrections. 75 Instead, the U.S. antitrust system had "an inbuilt thrust toward greater severity or further extension." 76 Nothing, Professor Bork warned, seemed able to contain the destructive march of intervention: "This process has no obvious stopping point." 77

The image of a system out of control served Professor Bork's rhetorical aims; it showed the urgency for reform by presenting a system in shambles. The image also distorted (more mildly, misread) current trends substantially. When The Antitrust Paradox appeared in January 1978, each institution Professor Bork rebuked--the Congress, the courts, and the federal enforcement agencies--had taken steps to rebalance the antitrust system. 78 The adjustments came slowly, but they were coming, nonetheless. If Professor Bork had acknowledged that the seemingly out-of-control institutions [\*1174] were making important adjustments, his book would have lost some (maybe much) of its force.

A second decisive contribution to the irrationality narrative came in the late 1980s and early 1990s from one of Professor Bork's harshest critics, Professor Robert Pitofsky. Though Professor Pitofsky scorned Professor Bork's calls for a vast retrenchment of antitrust enforcement, he used his own version of the irrationality narrative while setting out a more interventionist agenda. 79 Describing federal merger enforcement from the early 1960s through the early 1990s, Professor Pitofsky wrote:

American antitrust policy has tried to balance possible threats to competition against merger benefits, but remarkably, has careened from one extreme to another in this balancing process. For example, the United States had by far the most stringent antimerger policy in the world in the 1960s, striking down mergers among small firms in unconcentrated markets. By the 1980s, the United States maintained an extremely lenient merger policy, regularly allowing billion dollar mergers to go through without government challenge, even when they involved direct competitors. 80

Like Professor Bork in The Antitrust Paradox, Professor Pitofsky presented a system run amok. Federal policy "careen[s] from one extreme to another," like an automobile with an impaired driver swerving across the centerline. 81 No institutional feature in the U.S. system provided needed balance. 82

In Professor Pitofsky's version of the narrative, the solution to the aberrant enforcement behavior came by way of appointments--including his own--to the federal agencies. 83 In 2002, after chairing the FTC from 1995 to 2001, Professor Pitofsky said federal merger control by the late 1990s "stopped careening from aggressive enforcement based in some part on a populist ideology to minimalist enforcement based on hostility to the core assumptions of antitrust . . . ." 84 Under the Clinton Administration's appointees, federal policy stopped "careening," avoiding the extremes of an overheated, populist-inspired activism of the 1960s and the "minimalist" program of the Reagan presidency with its "hostility to the core assumptions of antitrust." 85

For Professor Pitofsky, like Professor Bork, the narrative of a system gripped by irrational, erratic variations in behavior served an important instrumental purpose. The portrayal of a regime swinging wildly between extremes allowed Professor Pitofsky to claim the role--as suggested in the [\*1175] title of his 2002 article, Antitrust at the Turn of the Twenty-First Century: A View from the Middle--of the wise centrist. 86 Professor Pitofsky underscored the rationality of his own program by juxtaposing it against the irrationality of his predecessors. 87 Clinton Administration antitrust officials strove to claim the mantle of wise centrism. 88 As the following passage from an essay in The Economist in 2000 shows, they framed their program as a sensible middle way between the irrational interventionism of the 1960s and 1970s and the inactivity of the 1980s:

It helps that [DOJ Assistant Attorney General Joel] Klein and his counterpart at the FTC, Robert Pitofsky, have been deliberately low-key in talking about their activities, claiming that they are modest and in the legal mainstream of legal thought and economics. They concede that they have been more interventionist than the laissez-faire ideologues of the Reagan years, but they say they are nothing like the trust-busting zealots of the 1960s who saw evil in every big company or merger. 89

In reporting on the Clinton administration strategy, The Economist presents the federal enforcement policy just as the DOJ and FTC leadership wished: a "modest" and "mainstream" program standing between two eras of irrationality; one guided by "trust-busting zealots" and the other led by "laissez-faire ideologues." 90

Taken on its own terms, the irrationality interpretation of U.S. antitrust history provides a grim picture of the American system. One should be wary of a system that intermittently has lucid policymaking intervals, but its normal state is irrationality. If everything depends on the appointment of wise centrists to head the agencies, nothing good can happen when the [\*1176] choice of DOJ or FTC leadership is not so inspired. Because personalities are decisive, when the wise centrists depart, nothing in the institutions themselves can prevent the system from returning quickly to bad old habits.

As the quotation presented above illustrates, the wise centrism story acquires force if periods of thoughtless extremism bracket the sensible policy era. As developed by Professor Pitofsky and other antitrust scholars, the irrationality narrative derives its power from the system's tendency to embrace extremes. 91 Dramatic variations in performance demonstrate the absence of thoughtful policy-making. The narrator seems sane by comparison if all others appear to be deranged. Professor Pitofsky's article in 2002 about the future of antitrust policy used this framing technique. 92 He wrote that "during the Reagan years, there was no enforcement whatsoever against non-horizontal mergers and joint ventures, boycotts, minimum resale price maintenance, exclusive dealing contracts, tie-in sales, attempts to monopolize, and monopolization." 93

The passage quoted above highlights two recurring features of the irrationality narrative. First, Professor Pitofsky's statement uses sweeping, categorical language ("no enforcement whatsoever") to describe the period of extreme inactivity. 94 In the 2002 article and in other papers, Professor Pitofsky made strong claims of inactivity to portray the Reagan Administration antitrust program as a gross departure from good practice. 95 Second, the portrayal of events, though written with the utmost self-assurance, often cannot withstand fact-checking and is verifiably incorrect. 96

[\*1177] Professor Pitofsky has plenty of esteemed company in telling the U.S. irrationality story by making bold claims belied by actual enforcement experience. As noted above, Professor Bork's denunciation of antitrust policy circa 1978 ignored important doctrinal and policy developments that fit poorly with a system out of control. 97 The story of horrible decay is less compelling if the asserted flaws are not so horrible. Other accounts of U.S. enforcement experience by the field's leading commentators include claims that during the Reagan Administration "merger enforcement ground to a halt," 98 that antitrust "[e]nforcement ceased," 99 and that the DOJ and the FTC "did not file a single vertical case." 100 Why did the U.S. system lose its mind? The answer, say two of America's best scholars, is that "extremists" took control of the enforcement agencies. 101 Experts in the U.S. might excuse these descriptions of federal enforcement as careless hyperbole. In my experience, foreign observers are more likely to take them at face value.

The story of U.S. antitrust policy in the 1980s is considerably more complex. Crucial factual tenets of the irrationality narrative are unsupportable. Merger enforcement never halted, 102 enforcement never ceased, 103 and vertical restraints cases (at least a few) still appeared. 104 To look beyond the categorical statements of inactivity and recount enforcement developments [\*1178] accurately would reveal a more thoughtful enforcement program at work. There is a major difference, for example, between saying a merger enforcement program has disappeared, and saying that boundaries have been reset, but policed actively.

Would a fuller, more accurate account of federal enforcement trends over time reveal intense debate about the proper direction of policy? Of course. Has policy shifted across administrations, especially after a regime change? No doubt. Yet, liberated from the irrationality narrative's determination to accentuate the magnitude of changes and cast decision-makers as senseless extremists, a more faithful account of U.S. federal enforcement history would portray adjustments as more gradual and nuanced, in most cases, than the irrationality narrative suggests. The discipline imposed by institutional arrangements, not simply patterns in leadership appointments (whether irrational officials or prudent centrists), would account for refinements over time.

#### No populism impact---states won’t risk war, isolation, AND are already stagnant.

John Mueller 21, Adjunct Professor of Political Science and Senior Research Scientist at the Mershon Center for International Security Studies, "The Rise of China, the Assertiveness of Russia, and the Antics of Iran," in The Stupidity of War: American Foreign Policy and the Case for Complacency, Chapter 6, 02/17/2021, pg. 163-167.

Complacency, Appeasement, Self-destruction, and the New Cold War

It could be argued that the policies proposed here to deal with the international problems, whether real or imagined, presented by China, Russia, and Iran constitute exercises not only in complacency, but also in appeasement. That argument would be correct. As discussed in the Prologue to this book, appeasement can work to avoid military conflict as can be seen in the case of the Cuban missile crisis of 1962. As also discussed there, appeasement has been given a bad name by the experience with Hitler in 1938.

Hitlers are very rare, but there are some resonances today in Russia’s Vladimir Putin and China’s Xi Jinping. Both are shrewd, determined, authoritarian, and seem to be quite intelligent, and both are fully in charge, are surrounded by sychophants, and appear to have essentially unlimited tenure in office. Moreover, both, like Hitler in the 1930s, are appreciated domestically for maintaining a stable political and economic environment. However, unlike Hitler, both run trading states and need a stable and essentially congenial international environment to flourish.128 Most importantly, except for China’s claim to Taiwan, neither seems to harbor Hitler-like dreams of extensive expansion by military means. Both are leading their countries in an illiberal direction which will hamper economic growth while maintaining a kleptocratic system. But this may be acceptable to populations enjoying historically high living standards and fearful of less stable alternatives. Both do seem to want to overcome what they view as past humiliations – ones going back to the opium war of 1839 in the case of China and to the collapse of the Soviet empire and then of the Soviet Union in 1989–91 in the case of Russia. Primarily, both seem to want to be treated with respect and deference. Unlike Hitler’s Germany, however, both seem to be entirely appeasable. That scarcely seems to present or represent a threat. The United States, after all, continually declares itself to be the indispensable nation. If the United States is allowed to wallow in such self-important, childish, essentially meaningless, and decidedly fatuous proclamations, why should other nations be denied the opportunity to emit similar inconsequential rattlings? If that constitutes appeasement, so be it. If the two countries want to be able to say they now preside over a “sphere of influence,” it scarcely seems worth risking world war to somehow keep them from doing so – and if the United States were substantially disarmed, it would not have the capacity to even try.

If China and Russia get off on self-absorbed pretensions about being big players, that should be of little concern – and their success rate is unlikely to be any better than that of the United States. Charap and Colton observe that “The Kremlin’s idee fixe that Russia needs to be the leader of a pack of post-Soviet states in order to be taken seriously as a global power broker is more of a feel-good mantra than a fact-based strategy, and it irks even the closest of allies.” And they further suggest that

The towel should also be thrown in on the geo-ideational shadow-boxing over the Russian assertion of a sphere of influence in post-Soviet Eurasia and the Western opposition to it. Would either side be able to specify what precisely they mean by a regional sphere of influence? How would it differ from, say, US relations with the western-hemisphere states or from Germany’s with its EU neighbors?129

Applying the Gingrich gospel, then, it certainly seems that, although China, Russia, and Iran may present some “challenges” to US policy, there is little or nothing to suggest a need to maintain a large US military force-in-being to keep these countries in line. Indeed, all three monsters seem to be in some stage of self-destruction or descent into stagnation – not, perhaps, unlike the Communist “threat” during the Cold War. Complacency thus seems to be a viable policy.

However, it may be useful to look specifically at a couple of worst-case scenarios: an invasion of Taiwan by China (after it builds up its navy more) and an invasion of the Baltic states of Estonia, Lithuania, and Latvia by Russia. It is wildly unlikely that China or Russia would carry out such economically self-destructive acts: the economic lessons from Putin’s comparatively minor Ukraine gambit are clear, and these are unlikely to be lost on the Chinese. Moreover, the analyses of Michael Beckley certainly suggest that Taiwan has the conventional military capacity to concentrate the mind of, if not necessarily fully to deter, any Chinese attackers. It has “spent decades preparing for this exact contingency,” has an advanced early warning system, can call into action massed forces to defend “fortified positions on home soil with precision-guided munitions,” and has supply dumps, booby traps, an wide array of mobile missile launchers, artillery, and minelayers. In addition, there are only 14 locations that can support amphibious landing and these are, not surprisingly, well-fortified by the defenders.130

The United States may not necessarily be able to deter or stop military attacks on Taiwan or on the Baltics under its current force levels.131 And if it cannot credibly do so with military forces currently in being, it would not be able to do so, obviously, if its forces were much reduced. However, the most likely response in either eventuality would be for the United States to wage a campaign of economic and military (including naval) harassment and to support local – or partisan – resistance as it did in Afghanistan after the Soviet invasion there in 1979. 132 Such a response does not require the United States to have, and perpetually to maintain, huge forces in place and at the ready to deal with such improbable eventualities.

The current wariness about, and hostility toward, Russia and China is sometimes said to constitute “a new Cold War.”133 There are, of course, considerable differences. In particular, during the Cold War, the Soviet Union – indeed the whole international Communist movement – was under the sway of a Marxist theory that explicitly and determinedly advocated the destruction of capitalism and probably of democracy, and by violence to the degree required. Neither Russia nor China today sports such cosmic goals or is enamored of such destructive methods. However, as discussed in Chapters 1 and 2, the United States was strongly inclined during the Cold War massively to inflate the threat that it imagined the Communist adversary to present. The current “new Cold War” is thus in an important respect quite a bit like the old one: it is an expensive, substantially militarized, and often hysterical campaign to deal with threats that do not exist or are likely to selfdestruct.134

It may also be useful to evaluate terms that are often bandied about in considerations within foreign policy circles about the rise of China, the assertiveness of Russia, and the antics of Iran. High among these is “hegemony.” Sorting through various definitions, Simon Reich and Richard Ned Lebow array several that seem to capture the essence of the concept: domination, controlling leadership, or the ability to shape international rules according to the hegemon’s own interests. Hegemony, then, is an extreme word suggesting supremacy, mastery, preponderant influence, and full control. Hegemons force others to bend to their will whether they like it or not. Reich and Lebow also include a mellower designation applied by John Ikenberry and Charles Kupchan in which a hegemon is defined as an entity that has the ability to establish a set of norms that others willingly embrace.135 But this really seems to constitute an extreme watering-down of the word and suggests opinion leadership or entrepreneurship and success at persuasion, not hegemony.

Moreover, insofar as they carry meaning, the militarized application of American primacy and hegemony to order the world has often been a fiasco.136 Indeed, it is impressive that the hegemon, endowed by definition by what Reich and Lebow aptly call a grossly disproportionate military capacity, has had such a miserable record of military achievement since 1945 – an issue discussed frequently in this book.137 Reich and Lebow argue that it is incumbent on IR scholars to cut themselves loose from the concept of hegemony.138 It seems even more important for the foreign policy establishment to do so.

There is also absurdity in getting up tight over something as vacuous as the venerable “sphere of influence” concept (or conceit). The notion that world affairs are a process in which countries scamper around the world seeking to establish spheres of influence is at best decidedly unhelpful and at worst utterly misguided. But the concept continues to be embraced in some quarters as if it had some palpable meaning. For example, in early 2017, the august National Intelligence Council opined that “Geopolitical competition is on the rise as China and Russia seek to exert more sway over their neighboring regions and promote an order in which US influence does not dominate.”139 Setting aside the issue of the degree to which American “influence” could be said to “dominate” anywhere (we still wait, for example, for dominated Mexico supinely to pay for a wall to seal off its self-infatuated neighbor’s southern border), it doesn’t bloody well matter whether China or Russia has, or seems to have, a “sphere of influence” someplace or other.

More importantly, the whole notion is vapid and essentially meaningless. Except perhaps in Gilbert and Sullivan’s Iolanthe. When members of the House of Lords fail to pay sufficient respect to a group of women they take to be members of a ladies’ seminary who are actually fairies, their queen, outraged at the Lords’ collected effrontery, steps forward, proclaims that she happens to be an “influential fairy,” and then, with a few passes of her wand, brushes past the Lords’ pleas (“no!” “mercy!” “spare us!” and “horror!”), and summarily issues several edicts: a young man of her acquaintance shall be inducted into their House, every bill that gratifies his pleasure shall be passed, members shall be required to sit through the grouse and salmon season, and high office shall be obtainable by competitive examination. Now, that’s influence. In contrast, on December 21, 2017, when the United States sought to alter the status of Jerusalem, the United Nations General Assembly voted to repudiate the US stand in a nearly unanimous vote that included many US allies. Now, that’s not influence.

In fact, to push this point perhaps to an extreme, if we are entering an era in which economic motivations became paramount and in which military force is not deemed a sensible method for pursuing wealth, the idea of “influence” would become obsolete because, in principle, pure economic actors do not care much about influence. They care about getting rich. (As Japan and Germany have found, however, influence, status, and prestige tend to accompany the accumulation of wealth, but this is just an ancillary effect.) Suppose the president of a company could choose between two stories to tell the stockholders. One message would be, “We enjoy great influence in the industry. When we talk everybody listens. Our profits are nil.” The other would be, “No one in the industry pays the slightest attention to us or ever asks our advice. We are, in fact, the butt of jokes in the trade. We are making money hand over fist.” There is no doubt about which story would most thoroughly warm the stockholders’ hearts.

#### The plan is bad for the Philippines economy.

Balisacan 19 (Arsenio M. Balisacan-Philippine Competition Commission. “Toward a Fairer Society: Inequality and Competition Policy in Developing Asia” *, The Philippine Review of Economics* 2019 56(1&2):127-147. DOI: 10.37907/7ERP9102JD , <https://econ.upd.edu.ph/pre/index.php/pre/article/download/982/880> , date accessed 9/19/21)

Rising inequality poses a serious threat to sustained growth and poverty reduction in developing Asia. Many countries in the region have adopted competition policy—also known as antitrust—to promote economic welfare by protecting competitive processes, as well as in consideration of public interests, including social equity. This paper uses the Philippine experience to illustrate the conceptual and institutional issues in operationalizing competition policy for development. Competition policy in the Philippines has historical roots in its struggle for economic and social reforms aimed at achieving inclusive development. Effectively framing competition policy to stay close to its core guiding principle is key to its effectiveness in contributing to inclusive development. The paper concludes that, in the Philippine context, adhering to consumer welfare standards in competition policy promotes a fairer social outcome (i.e., reduction of income inequality and poverty) while improving economic efficiency.

#### No nuclear terrorism.

Ward 18, analyst on the Defence, Security, and Infrastructure team at RAND Europe. Citing Dr Beyza Unal, a research fellow in nuclear policy at think tank Chatham House. (Antonia, 7/27/18, "Is Nuclear Terrorism Distracting Attention from More Realistic Threats?", *RAND*, https://www.rand.org/blog/2018/07/is-the-threat-of-nuclear-terrorism-distracting-attention.html)

Despite Obama's remarks in 2016 and these two incidents, experts and officials contest the viability of the nuclear terrorism threat. Dr Beyza Unal, a research fellow in nuclear policy at think tank Chatham House, argued there is currently no evidence that terrorist groups could build a nuclear weapon. Similarly, a report by the Council on Foreign Relations in 2006 emphasized how building a nuclear bomb is a difficult task for states, let alone terrorists. This is because of the issues involved in accessing uranium and creating and maintaining it at the correct grade (enriched uranium).

While nuclear terrorism is a concern, the majority of terrorist attacks are conducted with conventional explosives. The 2017 Europol Terrorism Situation and Trend Report states that 40 percent of terrorist attacks used explosives. These explosives originate from a wide variety of countries across the world. According to a study by Conflict Armament Research, large quantities of explosive precursor chemicals used to make bombs as seen in the 7/7 attack in London in 2005 and the 2017 Manchester Arena attack, have been linked to supply chains in the United States, Europe, and Asia via Turkey. The threat from the spread of chemical precursors prompted the EU to begin looking at ways to tighten the regulations of these chemicals (PDF).

A nuclear terrorist attack would have grave consequences, but it is currently not a realistic or viable threat given that it would require a level of sophistication from terrorists that has not yet been witnessed. The recent focus of terrorist groups has been on simplistic strikes, such as knife and vehicular attacks. If countries are concerned about nuclear terrorism, the best way to mitigate this risk could be to tighten security at civilian and government nuclear sites. But governments would be better off focusing their efforts on combatting the spread and use of conventional weapons.

## Advantage 3

#### Their evidence for Judicial Activism is from Muffett—who cites Roe v Wade as bad law

James Muffett 14. Founder & President of Student Statesmanship Institute and President of Citizens for Traditional Values. “The Danger Of Judicial Activism”. Michigan All Rise. 9-8-14. <https://michiganallrise.org/resources/the-danger-of-judicial-activism/>

There is a battle in our nation between those who believe that judges should follow the law as intended by the legislature, and those who think judges have latitude to interpret the law according to their view of what the law ought to be. The latter are referred to as, “activist judges.” When judges insert their own personal bias, they usurp the role of the legislators whom the citizens elect to represent them in deciding disputed, difficult policy issues. Thus, judicial activism undermines the very basis of our representative democracy**.** It can be argued that activist judges have done more damage to traditional, Judeo-Christian values than the other branches of government combined. The areas of greatest damage include free enterprise, human life, marriage, personal freedoms, property rights and religious liberty. Judges who usurp the authority of the people are not merely incorrect; they are themselves unconstitutional. And they are unjust. In fact, Justice White in his Roe v. Wade dissent opinion, wrote that the court had acted “not in constitutional interpretation, but in the unrestrained imposition of its own, extra-constitutional value preferences.” In addition to short-circuiting the democratic process, this judicial approach creates an environment of unpredictability which ultimately leads to destabilization and more litigation. When judges exercising the power of judicial review are guided by the text, logic, structure, and original understanding of the Constitution and the law, they deserve our respect and gratitude. By operating with this type of judicial oversight, they are playing their part to make constitutional republican government a reality. But where judges usurp democratic legislative authority by imposing on the people their moral and political preferences, under the guise of fairness or empathy, they should be severely criticized and resolutely opposed. It is time for all citizens to wake up to this crisis and work to elect “Rule of Law” judges who exercise constitutional authority only to enforce the law as written and ensure that laws apply to everyone equally.

#### Muffett’s a conservative hack who thinks gay marriage is bad—that’s why he hates activism

Muffett and Graham 13 (James Muffett in an interview with Lester Graham, “Legislator: Gay civil rights would 'bully Christians'” , Michigan Radio NPR, <https://www.michiganradio.org/investigative/2013-05-01/legislator-gay-civil-rights-would-bully-christians> , May 1, 2013, date accessed 9/19/21)

Public polling and recent court cases have prompted greater discussion about adding protections for lesbian, gay, bisexual, and transgender people in Michigan’s civil rights law. Advocates for the change say it’s time to stop legally discriminating against LGBT people. Others say changing the law say it would mean people opposed to homosexual behavior would be discriminated against. The issue is beginning to play out in the Michigan legislature.

Michigan’s civil rights law is known as the Elliot-Larsen Civil Rights Act. It prohibits discrimination based on religion, race, color, national origin, age, sex, height, weight, family status, and marital status.

Advocates for lesbian, gay, bisexual, and transgender people and opponents of gay rights have one thing in common: both sides say discrimination should not be allowed. Where they go from there is very different.

LGBT advocates say sexual orientation and gender expression should be included in the Elliot-Larsen protections.

Anti-gay rights advocates say there’s no need for creating special classes of people to be protected.

James Muffett is President of Citizens for Traditional Values. The group’s website describes it as a statewide, pro-family organization. Muffett against expanding Elliot-Larsen to protect LGBT people. He does not believe people are born gay or lesbian. He believes it’s a behavior. He also believes you don’t have to list every type of person to be protected in the Elliot-Larsen Civil Rights Act.

JM: “Where do you stop the list? Do you put skinny people, you know, can you be fired for being skinny? Redheaded people or people who talk too loud, in other words, once you begin the enumeration process -which we feel like is the wrong way to go- once you do that, where do you stop?"

LG: “Under the Elliot-Larsen Act, your examples of skinny people or people with red hair, you can interpret both of those things as already being protected because you can’t be discriminated against because of your weight, you can’t be discriminated against because of your ethnic background. So, the question is: should U.S. citizens be discriminated against because of who they are? We don’t do that to other groups.”

JM: “Sure. So, discriminatory hiring and firing, you know, is wrong except for -this is a real question and I pose it back to you as a hypothetical- is it right then for the government to force you to fund or pay for something that’s morally reprehensible? And, so, this is a slippery slope down to violating the religious and the conscience rights of those who still hold that homosexuality is not a moral or a good thing for society and marriage specifically. That’s where I feel we’re not talking about that aspect of this debate at all right now. And, I think it’s a big missing part of the equation.”

#### But we’ll take the free impact turn: judicial activism key to solve every social good.

Sherry 13 (Suzanna Sherry-Herman O. Loewenstein Professor of Law, Vanderbilt University. “Why We Need More Judicial Activism”, Vanderbilt University Law School Public Law and Legal Theory Working Paper Number 13-3. This paper can be downloaded without charge from the Social Science Research Network Electronic Paper Collection: <http://ssrn.com/abstract=2213372> , date accessed 9/19/21)

With these exclusions, the chronological list of universally condemned cases is short (drumroll, please):

 Bradwell v. State and Minor v. Happersett, which in 1873 and 1874 upheld state laws prohibiting women from, respectively, practicing law or voting in state elections. Minor was overruled by the adoption of the Nineteenth Amendment in 1920; Bradwell remained good law until 1971, when it was discredited (but not officially overruled) in Reed v. Reed. 19

 Plessy v. Ferguson, which upheld racial segregation in 1896 and remained good law until it was discredited (but, again, not overruled) by Brown v. Board of Education in 1954.20

 Abrams v. United States and three other related 1919 cases, which upheld the censorship of political ideas and remained good law until they were overruled by Brandenburg v. Ohio in 1968.21

 Buck v. Bell, which upheld involuntary sterilization in 1927 on Justice Holmes’ famous reasoning that “three generations of imbeciles are enough,” and remained good law until it was discredited (but, again, not overruled) in 1942 by Skinner v. Oklahoma. 22

 Minersville School District v. Gobitis, which in 1940 allowed a school district to force children to salute the flag even though it violated the children’s religious principles. Gobitis was explicitly overruled only three years later, in West Virginia State Board of Education v. Barnette, in which Justice Jackson famously declared: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” 23

 Hirabayashi v. United States and Korematsu v. United States, which in 1943 and 1944 upheld, respectively, the exclusion of Japanese-Americans from the West Coast and their forced relocation to concentration camps during World War II. Neither case has ever been overruled although Hirabayashi’s and Korematsu’s convictions have been expunged and the United States has apologized and paid reparations to those affected by the exclusion and relocation orders.24

Each of these cases is universally recognized as wrong. Each also did great damage, not only to the particular plaintiffs but to our society. The two cases limiting women’s rights – Bradwell and Minor – helped to keep women in a state of subordination for almost a century. Plessy allowed Jim Crow laws to deepen, racism to become more entrenched, and the status of African-Americans to deteriorate for almost 60 years. We are still feeling the effects of the prolonged period of segregation. Abrams and its progeny, by allowing government censorship, led directly to the McCarthy witchhunts of the 1950s; the House Un-American Activities Committee (HUAC) ruined the lives of innocent individuals and encouraged friends, families, and neighbors to turn on one another. The decision in Buck led to a rash of involuntary sterilizations: Before Buck, an average of about 200 people were involuntarily sterilized each year; between Buck and Skinner that annual average increased tenfold to more than 2000. 25 Minersville, though short-lived, traumatized innocent children and encouraged a Soviet-like attitude towards forced displays of patriotism. Korematsu and Hirabayashi upheld the most invidious racially discriminatory regime since slavery, forced thousands to abandon their homes and livelihoods, and encouraged an anti-Asian bigotry that has since dissipated but not disappeared.

And all of these cases have something else in common: In each case, the Supreme Court upheld the challenged governmental action rather than invalidating it. Each is an example of a false negative, a failure to engage in judicial activism. Not a single activist case – a false positive invalidating a state or federal law – makes the list of worst cases. \* False negatives are more likely to eventually be repudiated than are false positives. The Supreme Court, it seems, is more likely to make the most egregious mistakes by being too cautious rather than by being too aggressive.

When it comes to judicial activism, then, the problem is in the eye of the beholder: Some people applaud the same activist cases that others deplore. But when the Court fails to act –instead deferring to the elected branches – it abdicates its role as guardian of enduring principles against the temporary passions and prejudices of popular majorities. It is thus no surprise that with historical hindsight we sometimes come to regret those passions and prejudices and fault the Court for its passivity. History teaches us that it is better to allow a few good laws to be blocked than to permit truly terrible laws to remain on the books as a result of judicial timidity or restraint.

Ideally, of course, the Court should be like Baby Bear: It should get everything just right, engaging in activism when, and only when, We the People act in ways that we will later consider shameful or regrettable. But that perfection is impossible, and so we must choose between a Court that views its role narrowly and a Court that views its role broadly, between a more deferential Court and a more activist Court. Both kinds of Court will sometimes be controversial, and both will make mistakes. But history teaches us that the false negatives – the cases in which a deferential Court fails to invalidate governmental acts – are of much more enduring, and detrimental, significance. Only a Court inclined toward activism will vigilantly avoid such cases, and hence we need more judicial activism.

\* \* \*

In evaluating the appropriate role of the judiciary in a democracy, theory can take us only so far. No theory can draw the line between too many and too few judicial invalidations, nor specify parameters or constraints that produce a perfect balance. We are left with the pragmatic task of making the best trade-off between false negatives and false positives, and only an examination of the actual consequences of judicial activism or restraint can inform that decision. What such an examination teaches us is that too little judicial activism is worse than too much. We most regret the cases in which the Supreme Court failed to prevent popular majorities from making serious constitutional mistakes. If we wish to avoid such regrets in the future, we should encourage more judicial activism, not less.

#### Alt causes to Congressional inaction---they’re routinely politically spineless.

#### No rule of law impact — their evidence has no scenario for war or extinction.

#### Democracy doesn’t solve war---best models.

Campbell et al. 18, \*Doctoral Candidate in Political Science, Ohio State University. \*\*Carter Phillips and Sue Henry Associate Professor of Political Science at the Ohio State University. \*\*\*Associate Professor of Political Science, Pennsylvania State University. (\*Benjamin W., \*\*Skyler J. Cranmer, \*\*\*Bruce A. Desmarais, September 13, 2018, “Triangulating War: Network Structure and the Democratic Peace”, *Cornell University*, Accessible at: <https://arxiv.org/pdf/1809.04141.pdf>)

Conclusion

The dyadic understanding of the democratic peace has become ubiquitous in International Relations. By looking beyond simple dyadic analysis, accounting for the embededness of states in a much more complex network, we found the democratic peace may not be as robust as previously thought. Our results demonstrate that after accounting for the tendency for like-regime states with common enemies not to fight one another, the effect of the democratic peace not only vanishes, but jointly democratic dyads seem to be *more* conflict prone than mixed dyads. These results are consistent across operationalizations of the outcome variable, our triadic closure predictor, measurements of joint democracy, and a variety of other factors. We believe this explanation for the democratic peace is not a mechanism for understanding the democratic peace, but instead, an alternative. What we have shown here is that conflict between democracies indeed exists and the peaceful relations occasionally found are not necessarily a function of the affinity of democratic states, or intrinsic attributes of democratic states, but instead, a function of the strategic inefficiencies of fighting a state with a shared enemy. While regime type may influence the interests of states, we find that it does not directly influence the probability that any two states fight one another.

There are three major implications to our research. First, scholars should be hesitant to consider dyadic conflict in isolation, as there are network dependencies informing whether a state engages or joins a MID. Second, preferences operating in addition to network interdependencies and collaboration explain much of the democratic peace. Third, when studying conflict, scholars and practitioners should consider the cost structure of collaboration, and how these dynamics inform not only conflict initiation, but conflict escalation. Particularly interesting is that the theoretical mechanism at work here is dramatically simpler than any of the established justifications for the democratic peace. We do not rely on arguments about institutions or norms, but just the simple and intuitive proposition that it does not make much sense for two states fighting a third to also fight each other. What the existing literature seems to have missed, usually theoretically and almost always empirically, is that dyadic conflicts do not occur in isolation, but in the context of a complex network of relations.

#### American democracy is resilient---institutional buffers ensure continuity.

Kroenig 20, Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University. (Matthew, *The Return of Great Power Rivalry: Democracy versus Autocracy from the Ancient World to the U.S. and China*, pg. 198-199, Oxford University Press)

American Democracy

The United States is the world’s oldest constitutional democracy. Fleeing persecution by European monarchs, the American founding fathers set up a system to check and balance the chief executive. The authors of the U.S. constitution were also very much inspired by the mixed system of government that proved so successful for the ancient Roman Republic. Individuals are selected for political positions through competitive elections. Freedom of the press, assembly, and many other liberties help to ensure that citizens have the opportunity for meaningful political participation. According to Polity, the United States has been rated as a democracy for over two centuries.3

Contemporary warnings of a possible decline in American democracy should be taken seriously, but, on inspection, they are often overblown. To be sure, American democracy is imperfect, but democracy does not require perfection. It requires free and fair elections and the broad range of civil and political rights that allow for meaningful political participation. There is no doubt that the United States meets this standard.

Worries about a U.S. president’s putative autocratic tendencies are not new; they are baked into the system. America’s founders were revolting against overbearing British monarchs and they wanted to be sure to prevent an overwhelming concentration of power in the executive branch. George Washington was criticized for his presumed monarchic ambitions. More recently, commentators criticized George W. Bush for supposedly consolidating power and creating an “imperial presidency.”4 What is truly most notable about the U.S. system, however, is not executive overreach, but the degree to which Congress and the courts, and the executive branch itself, continually step in to check the chief executive.5 This continues to remain true, even in the current era.

In sharp contrast to Russia, journalists do not have to worry that they will be shot in the back for criticizing the president. And, in distinction to China, the United States does not keep millions of Muslims locked up in re-education camps. It is perverse to draw a moral equivalence between democratic politicking in the United States and the gross evils perpetrated in Russia and China.

American democracy is strong enough to survive contemporary controversies and political scandals. There is little reason to believe that today’s headlines will be more damaging than the Teapot Dome Scandal, Watergate, Iran-Contra, or the Monica Lewinsky affair.

Indeed, contrary to the prevailing narrative, intense domestic political fights and polarization are not evidence that American democracy has failed; rather, they are proof that the system is working. Yes, democracy can be messy, but that is what makes the system great. These disagreements are not even permitted in autocratic states. Serious political conflicts of interest in autocracies often result in dead bodies. Our democratic political system gives us the ability to work out our differences through a mutually accepted and peaceful, institutionalized process. Legislative gridlock is not necessarily a problem. If half of the country strongly disagrees with a proposal, then it is not obviously a good idea, and probably should not become national law. The purpose of the U.S. government is not to enact legislation for its own sake but to ensure “life, liberty, and the pursuit of happiness.” By those measures the country is doing pretty well.

As Machiavelli argued five hundred years ago, discord within a republican system of government is not always pretty, but the results are more than worth it. Nations that desire expanded freedom at home and influence abroad should not rebuke domestic political struggles within a democracy, but celebrate them.

Indeed, the institutionalized tumult and discord in the United States will likely continue to be the primary engine for its continued international power and influence abroad.

# 2NC

### 2NC---AT: First Deficit

#### Regulation is more adaptable to changing market conditions.

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

#### Regulation is the more direct route to solvency

Shughart 8, PhD in Economics, Professor in Public Choice at Utah State University (William, “Regulation and Antitrust,” in *Readings in Public Choice and Constitutional Political Economy*, Ch 25)

The stated goals of antitrust policy are much the same as those of regulatory policy. It too attempts to influence the pricing and output decisions of private business firms. But enforcement of the antitrust laws proceeds by indirect means rather than by way of the hands-on price and entry controls normally associated with public regulation. Stripped to their essentials, the antitrust laws declare private monopolies to be illegal. Law enforcement is then carried out on a number of fronts, including preventing monopolies from being created in the first place through the merger of former competitors or the orchestration of collusive agreements among them, requiring the dissolution of large firms that have attained monopoly positions in the past, and limiting the use of certain business practices thought to facilitate the acquisition or exercise of market power.

#### Enforcement effect is identical to enacted statute.

Kathryn Watts 15, Garvey Schubert Barer Professor of Law at the University of Washington School of Law, “Rulemaking as Legislating,” The Georgetown Law Journal, Vol. 103, 2015, <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1035&context=faculty-articles>, pp. 1005-1007

When administrative agencies promulgate legislative rules,1 the rules look and feel much like congressionally enacted statutes,2 providing binding legal norms that govern nearly everything ranging from the quality of the air we breathe to the safety of the products we buy.3 Legislative agency regulations, for example, can bind courts and officers of the federal government, preempt state law, grant rights, and impose obligations enforceable by civil or criminal penalties.4 Yet despite the legally binding nature of legislative regulations, longstanding Supreme Court precedent refuses to embrace the notion that rulemaking constitutes an exercise of Article I “legislative Powers.”5 Instead, the Court insists that Congress cannot delegate its legislative powers and that rulemaking activities by administrative agencies must constitute exercises of the “executive Power” found in Article II of the Constitution.6 The Court’s most recent pronouncement to this effect came in 2013 in City of Arlington v. FCC when the Court noted that although agency rulemaking takes a “legislative form,” such rulemaking activities “are exercises of—indeed, under our constitutional structure they must be exercises of—the ‘executive Power.’”7 As the Court’s opinion in City of Arlington suggests, constitutional concerns help to explain the Court’s stubborn adherence to its longstanding view that rulemaking constitutes an incident of executive rather than legislative power. Specifically, the nondelegation doctrine insists that Congress may not delegate legislative power because Article I, Section One of the Constitution vests the legislative power in Congress, not elsewhere.8 In its modern form, the nondelegation doctrine also provides that there is no forbidden delegation of legislative power so long as Congress provides some kind of an “intelligible principle” to guide the agency in its execution of the law.9 In other words, if Congress sets forth some kind of a guiding principle—even a hopelessly vague standard like, say, regulate “in the public interest”10—then the courts declare agency rulemaking to be constitutionally permissible as an incident of executive functions.11 It is through this reading of legislative powers that the Court is able to insist that Congress may not delegate legislative powers and, at the same time, routinely rubber stamp wide-ranging delegations of rulemaking power to agencies.12

#### Detterence solves this card’s warrants.

Fleisher 20, analyst @ American Economic Association (Chris, “Regulation by shaming,” <https://www.aeaweb.org/research/regulation-shaming-osha-enforcement>)

A paper in the June issue of the American Economic Review says that publicly shaming one rule breaker can have spillover effects, causing nearby peer companies to improve more than if they’d been targeted themselves. The paper offers insights into how information can be used to encourage regulatory compliance and generally deter bad behavior. “Regulators enact regulatory standards and they enforce them, but one of the complementary goals of regulation should be to provide information to the world knowing that there's imperfect information out there,” author Matthew Johnson said in an interview. “And that's fully in line with the mission of many of these agencies.” There are all kinds of contexts where information is used to hold companies accountable, like requiring restaurants to post hygiene cards or companies to disclose their toxic emissions. And it often works. Johnson wondered whether this “shaming” would be effective in the labor market. [O]ne of the complementary goals of regulation should be to provide information to the world knowing that there's imperfect information out there. The question is important not only for economists who want to know how employers respond to the threat of disclosing information, but also for public welfare and safety. There were 3.7 million work-related injuries and illnesses in 2015, costing the United States an estimated $250 billion per year. Johnson dug into data from the Occupational Safety and Health Administration, “the poster child” of under-resourced agencies, he said. OSHA’s ten regional offices routinely inspect workplaces for health and safety standards. But with just 2,000 inspectors responsible for 130 million workplaces, the agency can’t visit every site. So it’s important for OSHA to get the maximum impact from each inspection. One way is to publicize the most egregious offenders. When penalties rise above a certain threshold—$40,000 to $45,000, depending on the region—OSHA sends out a press release to local news outlets and trade publications. Spreading word of bad actors The number of news articles about OSHA violations increased after the watchdog agency created a cutoff rule for when a press release would be sent out. Penalties that exceeded $40,000 or $45,000 would be publicized. Regions 1 and 4 had adopted that cutoff rule in 2002, while other regions adopted the policy in 2009 (noted by the vertical plotline). News Articles Region 1 Region 4 Region 5 Region 6 Region 7 2002 2004 2006 2008 2010 2012 0 20 40 60 80 100 120 140 Source: author data Sending out press releases led to substantial improvements in workplace safety and health, not just at the site of the violation but also at other nearby facilities. After the shaming of one company, there were 73 percent fewer violations at other companies within a roughly three-mile radius. The threat of being outed was enough to force surrounding workplaces to make changes even though they were not actually inspected.

#### If they’re right that companies would risk it all to violate the regulation, they would do it in antitrust too

Spindler 64 (George Spindler. “ANTITRUST-RESTRAINT OF TRADE-CONSIGNMENT CONTRACT BETWEEN OIL COMPANY AND FILLING STATION OPERATOR: IS IT ILLEGAL AS AGREEMENT FOR RESALE PRICE MAINTENANCE?” , *DePaul Law Review* , Volume 14, Issue 1, 1964, <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=3299&context=law-review> , date accessed 9/7/21)

Resale price maintenance would seem to demand a sale by the supplier and a resale by the purchaser. Thus consignments, whereby an agent sells goods of his principal at prices fixed by him, with title passing directly from producer to consumer have been held not to constitute resale price maintenance, in the case of United States v. General Electric.15 [[BEGIN FOOTNOTE 15]] 15 272 U.S. 476 (1926). The General Electric Company had established a nationwide system to distribute electric light bulbs through "agents." The agents could sell only at prices set by General Electric. Indeed, the evidence indicated that the purpose of the consignment program was to circumvent the antitrust prohibition against manufacturer's control of resale prices. [[END FOOTNOTE 15]] In this case, after carefully examining General Electric's consignment agreements,16 the Court found nothing inconsistent with the agency relationship claimed by the company. The Court concluded,

... there is nothing as a matter of principle or in the authorities which requires us to hold that genuine contracts of agency like those before us, however comprehensive as a mass or whole in their effect, are violation of the Anti-trust Act. The owner of an article patented or otherwise is not violating the common law or the Anti-trust Law by seeking to dispose of his articles directly to the consumer and fixing the price by which his agents transfer the title from him directly to such customer. 17

#### Antitrust is one-off and targeted, which precludes economy-wide changes

Wheeler 21, Visiting Fellow - Governance Studies, Center for Technology Innovation (Tom, “A focused federal agency is necessary to oversee Big Tech,” Brookings, https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/)

Oversight of the dominant digital platforms’ broad effects on society is not possible within the existing federal regulatory structure. Agencies such as the Federal Trade Commission (FTC) and Department of Justice (DOJ) are filled with good and dedicated professionals, yet they are constrained in what they can do. Such limitations are perversely demonstrated by the recent headline-grabbing antitrust actions by both agencies. Antitrust enforcement, while important, is targeted against specific circumstances and cannot protect against general consumer abuses. Similarly, while the FTC also has authority over unfair and deceptive acts, many abuses in the digital marketplace are harmful but not considered deceptive and unfair. The FTC is further hampered by limited power to promulgate broad rules, thus constraining most of its activities to one-off proceedings against a singular company for a specific type of abuse rather than establishing broad behavioral rules across the consumer-facing digital economy.

### 2NC---AT: Labor Exemption

#### This was not a complete 2AC arg, they didn’t say why regs don’t solve it.

#### Cards read on the perm means the counterplan nullifies labor exemptions because antitrust cannot exist in a regulated domaine.

#### 1NC fiated that labor unions are exempt from antitrust---solves.

Brishen Rogers 18. An Associate Professor at Temple University's Beasley School of Law, and a Fellow at the Roosevelt Institute. “The Limits of Antitrust Enforcement” Boston Review. 04-30-18. http://bostonreview.net/class-inequality/brishen-rogers-limits-antitrust-enforcement

Plus, the labor antitrust exemption **was never complete**, and as a result **contemporary antitrust directly restricts worker organizing in important ways***.* For example, businesses have challenged transnational efforts to raise wages for the world’s poorest garment workers as an antitrust problem, and they have **challenged unions’ efforts to build support among community allies** via private RICO suits that resurrect the old civil conspiracy doctrine. Contemporary antitrust also **prohibits organizing by independent contractors**, a category that includes many truck drivers, gig economy workers, and **many other vulnerable workers**. The posture of antitrust law in such cases is crucial: it doesn’t just fail to protect workers against employer retaliation, it **renders their efforts positively unlawful**. Under current law, Uber could likely obtain hefty damages from its drivers if they sought to unionize. Thus, what many workers need today isn’t old-fashioned trust-busting, but a rejuvenation of the old-fashioned antitrust exemption.

#### Regardless---they don’t solve---they can only topically increase prohibitions which means they can’t exempt unions from squo antitrust law by instituting a new standard.

### 2NC---AT: Modelling Deficit

#### No comparative evidence says antitrust is more likely to be modelled than regulations---more on this later.

#### The counterplan is modelled---it enacts unprecedented labor protections identical to the aff---zero reason the name of the statute matters for perception.

#### International audiences only care about executive signaling---Congress doesn’t change perceptions .

Charles Edel 18, senior fellow and visiting scholar at the United States Studies Centre at the University of Sydney, February 2018, “TRUMP AND THE US PRESIDENCY: THE PAST, PRESENT AND FUTURE OF AMERICA’S HIGHEST OFFICE,” <https://assets.ussc.edu.au/view/3d/97/51/67/4a/dc/66/39/40/b0/e0/96/f5/8b/99/78/original/959a3d253927020b0ed1a1bd671e65306f29b4f4/Trump-and-the-US-presidency-The-past-present-and-future-of-Americas-highest-office.pdf>

Finally, some have suggested that in response to Trump, and perhaps during this administration, the locus of power could shift back to the legislative branch. History, however, suggests that the president will continue to occupy the “bully pulpit” that sits at the centre of American political discourse. Congress can resist the president, as it did during the Nixon and Ford administrations in the 1970s, and it often becomes the centre of action during political impasses, as it was during Clinton’s impeachment in 1998 or during the budget showdowns of the Obama era. But it cannot take over foreign policy. As a result, the global focus will remain on the words of the president, the White House and the national security apparatus more than it does Congress.

#### Congress is worse.

Posner and Vermule 7 Adrian Vermule Professor of Law at Harvard Law School, Eric A. Posner Professor of Law at The University of Chicago Law School; 2007; The Credible Executive; University of Chicago Law Review; <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2737&context=journal_articles> – BS

Like the executive, Congress has a credibility problem. Members of Congress may be well motivated or ill motivated; the public does not know. Thus, when Congress passes a resolution criticizing presidential action or refuses to delegate power that he seeks, observers do not know whether Congress or the president is right. Ill-motivated members of Congress will constrain public-spirited presidents; thus the Madisonian cure for the problem of executive credibility could be worse than the disease.

Even if members of Congress are generally well motivated, Congress has a problem of institutional credibility that the president lacks. Although a voter might trust the member of Congress for whom she voted because she knows about his efforts on his district's behalf, she will usually know nothing about other members of Congress, so when her representative is outvoted, she might well believe that the other members are ill motivated. And, with respect to her own representative, he will often lack credibility compared to the president because he has much less information. Further, the reputation of congressional leaders is only very loosely tied to the reputation of the institution, while there is a closer tie between the president's reputation and the presidency. As a result, Congress is likely to act less consistently than the president, further reducing its relative credibility. Congressional lack of credibility undermines its ability to constrain the president: Congress can monitor the president and tell the public that the president has acted properly or improperly, but if the public does not believe Congress, then Congress's power to check the president is limited.

### 2NC---AT: Democracy Deficit

#### Links to them---they can’t stop enforcement of the consumer welfare standard---even if they expand antitrust to include labor, courts still enforce consumer protections.

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

#### Perm links to law enforcement tradeoff. The DOJ and FTC antitrust division maintains responsibility for the aff’s enforcement, even alongside a regulation.

#### 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.

#### The permutation causes antitrust suits to get dismissed. That still takes resources, but completely nullifies solvency.

Shelanski 11, Professor of Law @ Georgetown (Howard, “The Case for Rebalancing Antitrust and Regulation,” 109 MICH. L. REV. 683, Lexis)

One good way to measure the importance of a court decision is to ask how previous cases would have differed had the decision been in place earlier. By that measure, the Supreme Court's decisions in Verizon v. Trinko' and Credit Suisse v. Billing2 turn out to be unusually significant. By broadening the conditions under which regulation blocks antitrust enforcement, those cases redrew the boundary between antitrust and regulation and would likely have prevented the government from bringing, in previous decades, a number of important antitrust cases in regulated industries. Most notably, Trinko and Credit Suisse would likely have blocked the suit by the U.S. Department of Justice ("DOJ") that in 1984 broke up AT&T's monopoly over telephone service, considered among the most important antitrust enforcement actions in history. 4 The preclusion of such cases has strong implications for the future of both antitrust enforcement and industrial regulation. Before 2004, the year the Supreme Court decided Trinko, public agencies and private plaintiffs had long enforced antitrust law in a variety of regulated settings. Several of those cases reached the Supreme Court and many more went through lower federal courts with no finding that they were inconsistent with the core objectives of antitrust or would interfere with regulatory objectives.- Yet many of those cases would have difficulty surviving a motion to dismiss today. Without specifically indentifying legal flaws or harmful consequences from previous antitrust actions in regulated markets, the Supreme Court has in the past decade reconfigured the relationship between antitrust law and regulation to make it much more difficult for antitrust law to play an important role in regulated markets-a limitation this Article will argue is potentially costly and unnecessarily strong.

### Theory

#### This counterplan is core neg ground:

#### Offense

#### 1---Functional limits

Nina et al 21 (Jeff Buntin, Nina Fridman, Teja Leburu, Ezra Louvis, Ayush Midha, Bryce Rao, and Tim Wegener. “Antitrust Controversy Area Proposal”, <http://www.cedadebate.org/forum/index.php/topic,7654.0.html> , April 25, 2021, date accessed 9/15/21)

Non-antitrust regs CP

We imagine that the counterplan to regulate firms’ conduct using non-antitrust regulatory means will be one of the most critical tools in the negative’s arsenal, and will form a key ‘functional limit’ on the topic by establishing a test that the affirmative must pass in order to be viable. Affirmatives will need to demonstrate why the firm conduct they seek to regulate can only be conceptualized in terms of its anticompetitive effects and controlled on that basis. The net-benefit to this counterplan could be either the growth/innovation/international competitiveness disad with links specific to antitrust enforcement, or the DOJ/FTC resources tradeoff disad. It’s also quite possible that the neg could regulate conduct in a way that would not trigger the link to politics to nearly the same degree as antitrust action would.

#### 2---Education---it taps into a long-standing legal and policy debate, which demonstrates the existence of solvency deficits

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

A longstanding debate examines the comparative advantages of antitrust and regulation. The late Cornell economist Alfred Kahn, the architect of airline de- regulation in the Carter Administration, wrote that “society’s choices are always between or among imperfect systems, but that, wherever it seems likely to be effective, even very imperfect competition is preferable to regulation.”117 Kahn does not address antitrust in that quotation, but it suggests that he would find antitrust law’s more targeted, case-by-case approach to governing competition to be preferable to regulation. Indeed, Kahn elsewhere wrote, while expressing his “belief in vigorous enforcement of the antitrust laws,” that “the antitrust laws are not just another form of regulation but an alternative to it—indeed, its very opposite.”118 Then-Judge Stephen Breyer has similarly stated that “antitrust is not another form of regulation. Antitrust is an alternative to regulation and, where feasible, a better alternative.”119 The comparisons that Breyer and Kahn made were, in context, mostly be- tween antitrust and rate regulation, where the agency was trying to protect con- sumers from monopoly pricing.120 But some of these criticisms, including “high cost; ineffectiveness and waste; procedural unfairness, complexity, and delay; unresponsiveness to democratic control; and the inherent unpredictability of the end result,” apply to most kinds of regulation. 121 Regulation might well be worthwhile despite those potential drawbacks, but certain attributes—ex post and case-by-case enforcement, judicial oversight with the government bearing the burden of proof—make antitrust enforcement less vulnerable to those critiques.

#### 3---Resolutional synergy---only guaranteeing a strict tie to antitrust gives purpose to the “core antitrust laws” floor of the resolution.

#### Defense:

#### 1---There’s a clear deficit---just defend antitrust key or DOJ/FTC enforcement. Don’t punish the neg for a poorly constructed 1ac.

#### 2---The alternative is worse---they’ll be wholly plan inclusive.

#### 3---Protect the neg---they choose topic, speak first and last.

### 2NC---AT: Links

#### Does not---the counterplan does not use the FTC or DOJ so it thus cannot use their resources.

### 2NC---AT: 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.

#### The permutation severs. Antitrust and regulation are wholly distinct approaches---that's Shelanski. Prefer it, it’s from a Professor of Law.

#### The aff requires law enforcement, the CP doesn’t.

Bovard 21, senior director of policy at the Conservative Partnership Institute. She is the co-author of Conservative: Knowing What To Keep with former Senator Jim DeMint and a member of the TAC advisory board. (Rachel, “Why Republicans Must Rethink Antitrust,” *The American Conservative*, <https://www.theamericanconservative.com/articles/why-republicans-must-rethink-antitrust/>)

Accomplishing any of this, however, requires the right to rethink its reflexive hesitance to take action. This is especially true in the area of antitrust. Too many on the right conflate antitrust enforcement with regulation, when the two are quite distinct. Antitrust is targeted law enforcement. It addresses specific acts of marketplace conduct that must be thoroughly investigated by the Department of Justice or the Federal Trade Commission, and proven before a judge, before the law is enforced. Regulation, by contrast, goes after entire sectors of the economy with a one-size-fits-all approach, and does so without necessarily concerning itself with finding clear evidence of fault.

#### This distinction is relevant for our net-benefit

Heather 19, senior vice president for international regulatory affairs and is responsible for antitrust policy at the U.S. Chamber of Commerce. (Sean, “Antitrust is not regulation. It’s law enforcement,” Roll Call, <https://www.rollcall.com/2019/07/23/antitrust-is-not-regulation-its-law-enforcement/>)

Put simply, antitrust is “not” regulation; it’s law enforcement. Antitrust fundamentally believes market forces maximize efficiency in the market to the benefit of the consumer. That’s why we use antitrust to restore market forces when a firm’s conduct prevents the market from functioning efficiently. By contrast, regulation drives specific market outcomes that extend beyond efficiency. In our democracy, the legislative process is responsible for setting regulatory priorities. For example, Congress is actively considering federal privacy legislation. The privacy debate is important, but privacy is not an antitrust matter to be decided by our antitrust agencies.

## Advantage 1

### 2NC---UQ

#### COVID destroyed employer leverage---that’s Ro. Companies cannot find enough workers and there are record job openings, causing every business across all industries to raise wages. That’s increase union leverage which solves the aff.

#### Worker shortages are causing wages to soar

**Levanon 21** , Econ Professor @ NYU. PhD from Princeton. (Gad, 7/26/2021, “Why Wages Are Growing Rapidly—Both Now And In The Future,” *Forbes*, <https://www.forbes.com/sites/gadlevanon/2021/07/26/why-wages-are-growing-rapidly-both-now-and-in-the-future/?sh=39a813a1cfe9> Date Accessed: 9/23/2021)

Wages in 2021 have grown at the fastest rate in 35 years. This sudden and surprising burst will reduce corporate profits and add to already-soaring inflation.

What does this mean going forward? We can look at wage growth over three distinct time-horizons: spring and summer of 2021, late 2021 and 2022, and beyond 2022. The wage growth outlook is strong in the first and last of these periods, especially in blue-collar and manual services jobs. Here’s what to expect:

Current Labor Market Conditions

Wages are going to rise to new peaks this summer. Despite high unemployment rates, the US is now experiencing severe labor shortages and historically-high wage growth.

Typically, slow wage growth accompanies high unemployment. But that did not happen during the pandemic-recession. Wages are growing much faster than at any other time in recent decades. According to the June Bureau of Labor Statistics jobs report, average hourly earnings over April-June rose by an annual rate of 6 percent. This is two to three times the typical growth rate in recent decades. And according to a June survey by the National Federation of Independent Business (NFIB), an historically high share of employers raised worker pay over the past three months.

Why? Because the US labor market is much tighter – workers are harder to find – than anyone expected. A surge in demand for workers combined with stagnant labor supply created historic recruiting difficulties in the past three months.

Usually, businesses form and expand gradually during periods of economic growth, creating a steady demand for workers. But as the in-person economy re-opens all at once, demand for workers is surging. Several industries, especially in the entertainment sector, need to double their workforce in a matter of months, an event without historical precedent.

On the supply side, many working-age adults are only slowly re-entering the workforce because of lingering factors driven by the pandemic (high federal unemployment benefits, fear of infection, the need to take care of young children during school closures/remote learning, elder care).

Employers have been deeply impacted: Qualified workers are once again hard to find. According to the May NFIB survey, almost half of all employers, 48 percent, have job openings they are unable to fill – the highest rate ever. In addition, according to the Job Openings and Labor Turnover Survey, the share of workers voluntary quitting their jobs, usually for another job, is historically high.

Recruiting and retention difficulties are more pronounced in blue-collar and manual services jobs, which often involve low wages and a higher risk of infection. In addition, the elevated unemployment benefits are an especially attractive option for workers with relatively low wages.

When it is harder to recruit and retain workers, employers react by raising salaries. This helps explain the stunning jump in wages in the leisure and hospitality sector, (a 15 percent annual rate, in February to June) which drove the overall salary surge in the spring.

New hires’ faster wage growth could lead to significant salary compression – when the wage premium for experience shrinks or even turns negative – so that more-experienced workers feel that their pay advantage is no longer significant. Such pay compression could lead to higher labor turnover as more-experienced workers, who can easily find new jobs in this tight labor market, decide to switch.

The acceleration in wages during the spring and summer could have a significant impact on future inflation. In recent months, inflation has been growing at the fastest rate in decades, probably mostly due to non-wage factors, such as a rapid rise in commodity, computer chip and auto prices. Significantly-growing labor costs in 2021 will have a noticeable impact on consumer prices and corporate profits – and labor costs are much stickier than commodity prices and are less likely to reverse.

### 2NC---I/L D

#### Market concentration can’t explain inequality or wage stagnation---that’s Bivens. Sites statistical research and concludes market concentration empirically has a miniscule correlate with decreased wages.

### 2NC---Impact D

#### Liberal order resilient---that’s Mousseu. Other liberal states fill in for the US but regardless their internal link takes years because it’s that the Prez after Biden will be isolationist.

#### Economic crisis doesn’t cause populism---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

#### Soft power fails

Abe **Greenwald**, policy adviser and online editor at the Foreign Policy Initiative. July/August **2010**. (“The Soft-Power Fallacy”. <http://www.commentarymagazine.com/viewarticle.cfm/the-soft-power-fallacy-15466?page=all>)  
Like Francis Fukuyama’s essay “The End of History,” soft-power theory was a creative and appealing attempt to make sense of America’s global purpose. Unlike Fukuyama’s theory, however, which the new global order seemed to support for nearly a decade, Nye’s was basically refuted by world events in its very first year. In the summer of 1990, a massive contingent of Saddam Hussein’s forces invaded Kuwait and effectively annexed it as a province of Iraq. Although months earlier Nye had asserted that “geography, population, and raw materials are becoming somewhat less important,” the fact is that Saddam invaded Kuwait because of its geographic proximity, insubstantial military, and plentiful oil reserves. Despite Nye’s claim that “the definition of power is losing its emphasis on military force,” months of concerted international pressure, including the passage of a UN resolution, failed to persuade Saddam to withdraw. In the end, only overwhelming American military power succeeded in liberating Kuwait. The American show of force also succeeded in establishing the U.S. as the single, unrivaled post–Cold War superpower. Following the First Gulf War, the 1990s saw brutal acts of aggression in the Balkans: the Bosnian War in 1992 and the Kosovo conflicts beginning in 1998. These raged on despite international negotiations and were quelled only after America took the lead in military actions. It is also worth noting that attempts to internationalize these efforts made them more costly in time, effectiveness, and manpower than if the U.S. had acted unilaterally. Additionally, the 1990s left little mystery as to how cataclysmic events unfold when the U.S. declines to apply traditional tools of power overseas. In April 1994, Hutu rebels began the indiscriminate killing of Tutsis in Rwanda. As the violence escalated, the United Nations’s peacekeeping forces stood down so as not to violate a UN mandate prohibiting intervention in a country’s internal politics. Washington followed suit, refusing even to consider deploying forces to East-Central Africa. By the time the killing was done, in July of the same year, Hutus had slaughtered between half a million and 1 million Tutsis. And in the 1990s, Japan’s economy went into its long stall, making the Japanese model of a scaled down military seem rather less relevant. All this is to say that during the presidency of Bill Clinton, Nye’s “intangible forms of power” proved to hold little sway in matters of statecraft, while modes of traditional power remained as critical as ever in coercing other nations and affirming America’s role as chief protector of the global order. If the Clinton years posed a challenge for the efficacy of soft power, the post-9/11 age has exposed Nye’s explication of the theory as something akin to academic eccentricity. In his book, Nye mentioned “current issues of transnational interdependence” requiring “collective action and international cooperation.” Among these were “ecological changes (acid rain and global warming), health epidemics such as AIDS, illicit trade in drugs, and terrorism.” Surely a paradigm that places terrorism last on a list of national threats starting with acid rain is due for revision.

## Advantage 2

### 2NC---Modelling D

#### No modeling---that’s Kovacic---US antitrust is seen as unstable and irrational because of the rule of reason and the randomness of court outcomes.

#### Antitrust ‘signaling’ is fake

Gerber 12, Distinguished Professor of Law at Chicago-Kent College of Law, B.A. from Trinity College, M.A. from Yale University, and J.D. from the University of Chicago, Awarded the Degree of Honorary Doctor of Laws by the University of Zurich, Former Visiting Professor at the Law Schools of the University of Pennsylvania, Northwestern University, and Washington University (David J., Global Competition: Law, Markets, and Globalization, p. 150)

f. International implications

These fundamental changes in the aims, methods and dynamics of US antitrust have important transnational implications. One set of implications involves foreign perceptions of US antitrust law. As we have seen, the changes are easily overlooked or misunderstood. They have not been signaled by a new statute or by new institutions or procedures. They are buried in the language of cases and in the actual operations of the legal system. As a result, observers often simply do not perceive the changes or recognize their implications. For example, non-US supporters of an economics-based system have often claimed that it would reduce uncertainty, simplify antitrust law and reduce costs. At a conceptual level it does. In practice, however, the picture has been more complicated.

#### Their evidence is all godawfull and not reverse causal---

#### 1---Marella has a single line that they’ve adopted a substantial lessening of competition test from Countries in general---no reason they become radical leftists who care about workers post aff.

Jose Maria L. Marella 18. J.D., University of the Philippines (UP) College of Law. “ADMINISTRATIVE WILL TO POWER: ARTICULATING THE GOALS OF ANTITRUST AND PROPOSING THEREFOR A REGULATORY FRAMEWORK” Philippine Law Journal. Vol. 91. 2018.

The complexities of modern government have often led Congress- whether by actual or perceived necessity-to legislate broad policy goals and general statutory standards, leaving the specific policy options to the discretion of an administrative body. 2 In this regard, the Philippine Competition Commission ("PCC")-the administrative body mandated to implement the Philippine Competition Act -has taken great strides in advancing the policy objectives of economic efficiency and consumer welfare. That the two policy objectives figure greatly in the exercise of the PCC's mandate is evident from its regulatory issuances and participation in relevant proceedings. A. Regulatory Issuances In its Implementing Rules and Regulations ("IRR"), the PCC adopts the "substantial lessening of competition" ("SLC") test,4 a Jurisprudential standard crafted and developed by foreign jurisdictions to weigh the anticompetitive effects of certain transactions**.** By assessing market indicators such as firm rivalry, prices, quality, and availability of goods and services, the SLC test filters out agreements that reduce competitive pressure among firms and disincentivize them from becoming more efficient and innovative.5 The IRR also allows the PCC to forbear-or desist from applying the provisions of the PCA-when, among other considerations, forbearance is consistent with the benefit and welfare of the consumers. 6 Economic efficiency and consumer welfare also take center stage in the PCC's Rules on Enforcement Procedure ("Enforcement Rules"), the rules and regulations governing hearings, investigation, and other proceedings on anti-competitive agreements, abuse of dominant market position, and other violations of the PCA.7 Preliminary inquiries-the PCC proceedings that parallel the prosecutor's preliminary investigation in criminal cases-are to be conducted with due regard to consumer welfare.8 Interim measures may be issued against entities when their acts would result in a material and adverse effect on consumers or competition in the market.9 Upon termination of enforcement proceedings, the PCC will determine the propriety of imposing conclusive remedies with the aim of maintaining, enhancing, or restoring competition in the market.10 Similar to the IRR, the PCC's Rules on Merger Procedure ("Merger Rules") employs the SLC test in determining whether a proposed merger or acquisition will, post-transaction, reduce economic efficiency or impair consumer welfare; in determining the appropriateness of imposing interim measures; 12 or in considering whether, before clearing a merger or acquisition, the parties must abide by certain conditions to remedy, prevent, or mitigate competitive harm. 13 In addition, pursuant to its market surveillance function, the PCC is empowered to motu proprio conduct a review of mergers that are reasonably foreseen to breach the SLC test. 14 Intervening by way of an amicus curiae brief, the PCC apprised the Supreme Court of the competition issue intertwined with the legal question in a pending case that assailed, as an ultra vires expansion of statutory language, the regulation issued by the Philippine Contractors Accreditation Board that created a nationality restriction that was unsupported by the governing statutory text.15 The PCC supported striking down the regulation, arguing that, on the basis of economic literature and empirical data, the nationality restriction constituted a regulatory barrier to entry that unduly favored domestic contractors to the detriment of foreign contractors. In its argument that the regulation inordinately restricts market competition, the PCC enunciated the following principles: Consumer welfare, which in this case refers to the welfare of both households and other businesses, is maximized when competition allows consumers to access and choose the most efficient producers, regardless of the service provider's nationality. Indeed, it is a settled principle in economics that if there are many players in the market, healthy competition will ensue. The competitors will try to outdo each other in terms of quality and price in order to survive and profit. Competition therefore results in better quality products and competitive prices, which redound to the benefit of the public.16 In its recent bid to take its legal scuffle with Globe and PLDT17 to the Supreme Court,18 the PCC donned its mantle "to level the playing field across all markets; to review the competitive implications of large transactions; and to actively investigate, prosecute, and sanction cases of cartelistic behaviors that prevent, restrict, or lessen market competition." 19 These mandates would be carried out to "[encourage] innovation among market players, [reward] their efficient and productive use of resources, and ultimately [redound] to the benefit of consumers by lowering prices and enhancing their right of choice over goods and services offered in the market. 20 Significantly, the general public has acquiesced to the perception that the PCC champions economic efficiency and consumer welfare. News reports have consistently adverted to the PCA as a landmark piece of legislation that will enhance and promote these two policy objectives. Even lawmakers have acknowledged the PCC's critical role in improving market competition. Senator Juan Miguel Zubiri, addressing PCC's representative, Commissioner Johannes Bernabe, in a legislative hearing concerning the telecommunications sector, stated: "I'm really one with you [...] So you guys have to help us out [...] We are fighting giants. But as I said, the least that can happen is [that they] shape up and give us better service[,] or the best is that more players can come in and give us the best service[.]"21 But are such policy objectives all there is to the PCA? Or does the statutory text, alone or in conjunction with related legal materials, admit of other governing principles? Addressing such questions is crucial as the PCA may also cover other goals that have not been explicitly recognized. The law, after all, admits of different interpretations. 22 This then requires stakeholders and other government bodies to defer to the "sound discretion of the government agency entrusted with the regulation of activities coming under [its] special and technical training and knowledge[.]" 23 In such case, the PCC might be undercutting its own potential to make even greater strides in other aspects of national development**.** Recognizing these other objectives will greatly influence the PCC's exercise of its mandate and, more importantly, could translate to better gains in national development**.** By no means does this Note claim that the PCC is severely limiting the exercise of its functions-whether consciously or subconsciously. Rather, it simply articulates other equally important antitrust considerations which can be construed from the statutory text-considerations which the PCC must also devote attention to, and which the public, considering the incipient but technical field of competition law, 24 must appreciate.

#### 2---Sitarman---is about WWII Europe.

Ganesh Sitaraman 18. Co-founder and Director of Policy for the Great Democracy Initiative. He is also a professor of law at Vanderbilt University. He served as policy director to Senator Elizabeth Warren during her Senate campaign, and then as her senior counsel in the U.S. Senate. “Taking Antitrust Away from the Courts: A Structural Approach to Reversing the Second Age of Monopoly Power”. 2018. https://ir.vanderbilt.edu/xmlui/bitstream/handle/1803/9447/Taking%20Antitrust%20Away%20from%20the%20Courts.pdf?sequence=1&isAllowed=y

After World War II, the United States engaged in a historic effort to rebuild Europe and Japan through the Marshall Plan. While the story of the Marshall Plan is well known, what is less commonly understood is that the United States exported aggressive antitrust laws to Europe during those post-war years. The Marshall Plan antitrust advisors believed that the massive consolidation in the German economy facilitated and sustained fascism, and they argued that a democratic society required a democratic economy.26 Today, in the context of increasing concentration, rising authoritarianism, and foreign governments commingling state and markets through state-owned enterprises and state capitalism, promoting economic democracy abroad should be an essential foreign policy objective. And yet, the text of the Trans-Pacific Partnership, a trade agreement designed by the Obama Administration, established the objectives of competition policy as “economic efficiency and consumer welfare,” a narrowly drawn and ideological conception of the purposes of antitrust law that has no basis in U.S. statutory law.27 Presidents and their administrations should abandon these cramped views of antitrust and instead encourage the adoption of more aggressive antitrust laws abroad.

#### 3---Gerber says that when states first implement antitrust regimes they look to the US---not that states will make a switch.

#### The relevant lines in Gerber are about post invasion Japan and Germany

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The “shot in the dark” that was the U.S. antitrust law system is today no longer solely a domestic field of law. It is now also a critically important component of global economic policy! The system that U.S. judges had evolved to deal with purely domestic problems and that relied on little more than confidence in the capacity of courts to develop reasonable responses to conflicts has been transformed into the central player in efforts to respond effectively to economic and other forms of globalization. It is now a U.S. export product, and the stakes are enormous. What directions and forms will the rules of competition take? Treatment of these issues will be a factor in the future of many countries, including the U.S., and for more than two decades Chicago-Kent has brought transnational competition law to our students, and Chicago-Kent faculty have contributed to the international discussion of these issues. A. Foreign Interactions and Perceptions U.S. antitrust now plays on a global stage, and much will depend on how foreign experts, lawyers, government officials and business leaders see U.S. antitrust. They will make decisions about what to do in their own countries and on the international level. This means that their perspectives on the U.S. system are critical to its roles both at home and abroad, and foreign images of U.S. antitrust have changed radically. Prior to the Second World War, those in Europe who knew anything about U.S. antitrust law (and they were few) generally considered it a mistake. They tended to see it as a failure that actually created more harm than good by forcing companies to merge rather than cooperate. This view predominated in large measure until after the Second World War. The Europeans were developing a different concept of competition law that emphasized administrative control of dominant firms. This conception of competition was spreading rapidly in Europe in the 1920s, but depression and war led to its virtual abandonment. After that war ended, however, U.S. antitrust law became associated with U.S. economic dominance in the “free world.” The real and imagined connections between economic concentration and military expansion in both Germany and Japan convinced many that U.S.-style antitrust law should be used to combat such concentrations. U.S. occupation forces in Germany and Japan imposed U.S. antitrust ideas during the occupation period, and the U.S. insisted that both countries either enact or maintain competition law after the occupation. This increased awareness of these ideas abroad. Perhaps more important, however, was the perception that antitrust was a source of strength for the U.S. economy and thus a potential spur to growth that other countries could employ. U.S.-style antitrust did not, however, always fit well with European legal traditions and institutions, and in most European countries skepticism toward the U.S. model limited progress in protecting competition. In Germany, however, a separate set of ideas about how to protect competition developed in the 1930s and 1940s in the underground, and after the war it became the basis for German antitrust law. From here it spread to the European level and became part of the process of Euro- pean integration. The basic idea of U.S. antitrust law—i.e., protecting the competitive process from restraints—was part of this model of competition law, but the model itself was conceptually and institutionally quite distinct. European scholars and officials in these areas often looked to U.S. antitrust for comparisons and insights into problems, but there was relatively little interaction between U.S. and European forms of competition law until the 1990s. In the 1990s these relationships became far closer and more important for both the U.S. and Europeans. Moreover, the fall of the Soviet Union precipitated widespread interest in market-based approaches around the world and revived the messianic tenor of the U.S. antitrust law community. Many countries that had socialist or other command-based approaches to the organization of economic activity now introduced antitrust laws or significantly increased their investment in the enforcement of such laws. Often they looked to U.S. antitrust officials, lawyers and scholars for help in implementing or evaluating their new activities.

### 2NC---Populism D

#### No populism impact---states respond to inequality via policy and are smart enough to not go to war because of income inequality---that’s Mueller.

### 2NC---!D---Nuclear Terrorism

#### No nuclear terrorism---the logistics of building and maintaining enriched uranium are impossibly sophisticated, and nuclear material is well-guarded. Terrorists are conservative and adhere to methods with proven track records---Ward

#### Alliance solves the impact

Heydarian 20—(Asia-based academic and author, research fellow at National Chengchi University; Asia Maritime Transparency Initiative). Richard Heydarian. April 23 2020. “The Day After VFA: Saving the Philippine-U.S. Alliance.” <https://amti.csis.org/the-day-after-vfa-saving-the-philippine-u-s-alliance/>. \*AFP = Armed Forces of the Philippines

But it is important to remember that, throughout the two decades of its existence, the VFA has been primarily a tool for non-traditional security cooperation. It was thanks to the VFA that the Philippines was able to rapidly call upon U.S. special forces to provide desperately-needed urban warfare and counter-terrorism training during the months-long Marawi siege by Islamic State-affiliated forces. It also enabled the Pentagon’s rapid provision of high-grade weaponry and real-time intelligence to support AFP operations. This was not the first time that the United States proved a critical ally against transnational terrorism—the VFA served as the primary mechanism through which the two allies waged a largely successful [campaign against al-Qaeda affiliated groups](https://www.nytimes.com/2003/05/31/world/threats-responses-southeast-asia-philippine-camps-are-training-al-qaeda-s-allies.html) in the 2000s. The United States’ single largest military deployment to the Philippines concerned neither China nor terrorism, but instead humanitarian assistance and disaster relief operations (HADR). Following 2013’s Super Typhoon Haiyan, which ravaged much of the central islands of the Philippines, local authorities struggled to reach far flung provinces. The U.S. military stepped in to help, [deploying](https://www.rappler.com/nation/250877-vfa-uncertain-us-envoy-hails-military-alliance-philippines-world-war-2-event) 13,400 troops along with an aircraft carrier, 12 ships, and 66 aircraft to provide much-needed assistance and rescue operations across the country. The Coming Anarchy Just days before Duterte’s announcement that he would abrogate the VFA, Philippine Defense Secretary Delfin Lorenzana admitted during Senate hearings that the agreement was critical to HADR operations since “the U.S. forces are always there in times of calamities.” The ongoing COVID-19 pandemic provides even a greater impetus for tightening bilateral security cooperation. To begin with, the country’s top brass, including AFP [chief Santos](https://www.rappler.com/nation/256078-military-chief-santos-tests-positive-coronavirus) and his predecessor and current Interior Secretary [Eduardo Año](https://www.msn.com/en-ph/news/national/dilg-chief-a%C3%B1o-positive-for-covid-19/ar-BB11XAgP?li=BBr8Mkn), have been infected with the coronavirus. The month-long lockdown of Manila and the Philippines’ industrialized north has placed immense strain on the Philippine military, which is [in charge of](https://www.rappler.com/nation/254527-video-military-demonstrates-vehicle-inspections-metro-manila-lockdown) manning countless checkpoints across the island of Luzon, with [former and current generals overseeing](https://news.abs-cbn.com/news/03/27/20/palace-defends-tapping-disciplined-ex-military-men-to-lead-covid-19-health-crisis-response) the overall lockdown operations. With the AFP increasingly bogged down in the north, and both soldiers and generals exposed to a ravenous epidemic, insurgent groups and transnational terrorists will enjoy significant leeway in the country’s peripheries, which so far remain largely unscathed by the COVID-19 epidemic. In addition, the severity of the crisis will likely necessitate greater participation by the military in the government response, as we have seen in both the United States and [the Philippines](https://news.abs-cbn.com/news/03/27/20/palace-defends-tapping-disciplined-ex-military-men-to-lead-covid-19-health-crisis-response).

#### No nuclear terror---even if acquisition.

\* fear of backlash from supporters, internal division, and international retaliation = deterrence

McIntosh & Storey 18 (Christopher McIntosh is visiting assistant professor of political studies at Bard College, Ph.D. in 2013 from The University of Chicago, specializing in international relations and has an M.A. in Security Studies from Georgetown & Ian Storey is a fellow at the Hannah Arendt Center for Politics and Humanities at Bard College, Ph.D. in Political Science from the University of Chicago; Between Acquisition and Use: Assessing the Likelihood of Nuclear Terrorism, *International Studies Quarterly*, 19 April 2018, sqx087, https://doi.org/10.1093/isq/sqx087)

Our approach offers a point of departure for strategically assessing the options, likely responses, and potential outcomes that could arise from the different paths available to a nuclear-armed non-state group. Too often analysts treat the decision by such groups to use nuclear weapons as if it occurs in a vacuum. In practice, terrorist groups face many short-term and long-term considerations. They are influenced by factors both external and internal to their organization. These include the potential for backlash among supporters, internal factionalization over nuclear strategy and doctrine, and an overwhelming response by the target state and the international community.

Moreover, we suggest a way to bring the recursivity of strategic choice into the account of terrorist organizational decision-making. These organizations must consider the long-term effects of a nuclear attack. An attack occurs in the context of an ongoing campaign by a well-established organization. Opportunity costs exist because escalating to nuclear attack forecloses future options. As well, conducting an attack may not only preclude other strategies, but the continued existence of the group itself. This changes the game significantly. In most cases, a nuclear attack must present not just an effective option for the moment, but the only strategic option worth pursuing going forward.

Once we take these considerations into account, the detonation of a nuclear weapon generally appears the least strategically advantageous option for non-state groups. Indeed, the factors presented here are analytically independent, adaptable, and scalable to particular threat contexts. We can therefore use our framework to study the opportunities and constraints faced by specific future groups. It should therefore assist in the process of planning responses to potential nuclear acquisition by terrorist groups.

Successive governments have now identified nuclear terrorism as a critical concern in the formulation of security policy. This line of thinking systematically underspecifies, or simply misunderstands, key considerations that terrorist organizations take into account. These include the group's organizational survival, opportunity costs, and the conflation of victory with the end of hostilities. Each factor presents strong disincentives to immediate nuclear attack. A nuclear-armed terrorist group is exceedingly dangerous, but for different reasons than normally assumed. The options available to the group that fall short of detonation or attack remain considerable, albeit less spectacular and immediate.

Just as scholars like Bunn et al. (2015) are careful to do, political actors and analysts should resist uncritically deploying the term “nuclear terrorism” in an umbrella fashion. This point goes beyond even the attempts at disaggregating “use” presented here. The threat of an attack involving an improvised nuclear device is vastly different than that of a “dirty bomb,” and both have little in common with the threat posed by an attack on a nuclear facility. Each deserves separate consideration when formulating policy, even if measures taken to address these concerns, such as controlling nuclear leakage, ultimately overlap. If any of the acquisition or threat scenarios we explore come to fruition, then potential target states will need strategies that potentially employ positive, as well as negative, incentives to lessen the attractiveness of nuclear attack. As we argue, a crisis involving a nuclear-armed terrorist group will be a negotiation—regardless of what the target state chooses to label it. Far from demonstrating weakness, employing threats while dangling the possibility of political concessions can widen internal divisions, heightening the overall organizational costs of escalating violence (Toros 2008; Cronin 2009).

Finally, efforts designed to improve intelligence capabilities both prior to and post-attack remain vital. Signature analysis as a forensic measure has shown promise as a way of identifying the origin of nuclear material—in some cases it can identify whether or not it was provided by a state (Kristo and Tumey 2013). These efforts would be improved with a more widespread international commitment via the IAEA to placing signature markers in weapons and weaponizable material (Korbatov et al. 2015, 70; Findlay 2014, 6).

Ultimately, when it comes to the threat of a nuclear attack by a terrorist, presumption should lie squarely on the side of skepticism rather than inevitability. While some terrorist organizations have some incentives for nuclear acquisition, paradoxically and thankfully, the most strategic uses of a nuclear weapon fall well short of actual nuclear attack. From a scholarly perspective, as well as a political one, we need to start to think through how states would act in a world with nuclear-armed non-state actors. In doing so, we should avoid assumptions that fit neither with known nuclear strategy nor the empirical behavior of non-state organizations. Like most clichés, the post–Cold War trope that the threat of attack is higher now than it was during the US-USSR arms race (Litwak 2016) obscures much more than it reveals.

#### Risk is nonexistent.

Weiss 15—visiting scholar at the Center for International Security and Cooperation at Stanford

(Leonard, “On fear and nuclear terrorism”, Bulletin of the Atomic Scientists March/April 2015 vol. 71 no. 2 75-87)

If the fear of nuclear war has thus had some positive effects, the fear of nuclear terrorism has had mainly negative effects on the lives of millions of people around the world, including in the United States, and even affects negatively the prospects for a more peaceful world. Although there has been much commentary on the interest that Osama bin Laden, when he was alive, reportedly expressed in obtaining nuclear weapons (see Mowatt-Larssen, 2010), and some terrorists no doubt desire to obtain such weapons, evidence of any terrorist group working seriously toward the theft of nuclear weapons or the acquisition of such weapons by other means is virtually nonexistent. This may be due to a combination of reasons. Terrorists understand that it is not hard to terrorize a population without committing mass murder: In 2002, a single sniper in the Washington, DC area, operating within his own automobile and with one accomplice, killed 10 people and changed the behavior of virtually the entire populace of the city over a period of three weeks by instilling fear of being a randomly chosen shooting victim when out shopping. Terrorists who believe the commission of violence helps their cause have access to many explosive materials and conventional weapons to ply their “trade.” If public sympathy is important to their cause, an apparent plan or commission of mass murder is not going to help them, and indeed will make their enemies even more implacable, reducing the prospects of achieving their goals. The acquisition of nuclear weapons by terrorists is not like the acquisition of conventional weapons; it requires significant time, planning, resources, and expertise, with no guarantees that an acquired device would work. It requires putting aside at least some aspects of a group’s more immediate activities and goals for an attempted operation that no terrorist group has previously accomplished. While absence of evidence does not mean evidence of absence (as then-Secretary of Defense Donald Rumsfeld kept reminding us during the search for Saddam’s nonexistent nuclear weapons), it is reasonable to conclude that the fear of nuclear terrorism has swamped realistic consideration of the threat. As Brian Jenkins, a longtime observer of terrorist groups, wrote in 2008: Nuclear terrorism … turns out to be a world of truly worrisome particles of truth. Yet it is also a world of fantasies, nightmares, urban legends, fakes, hoaxes, scams, stings, mysterious substances, terrorist boasts, sensational claims, description of vast conspiracies, allegations of coverups, lurid headlines, layers of misinformation and disinformation. Much is inconclusive or contradictory. Only the terror is real. (Jenkins, 2008: 26) The three ways terrorists might get a nuke To illustrate in more detail how fear has distorted the threat of nuclear terrorism, consider the three possibilities for terrorists to obtain a nuclear weapon: steal one; be given one created by a nuclear weapon state; manufacture one. None of these possibilities has a high probability of occurring. Stealing nukes. Nothing is better protected in a nuclear weapon state than the weapons themselves, which have multiple layers of safeguards that, in the United States, include intelligence and surveillance, electronic locks (including so-called “permissive action links” that prevent detonation unless a code is entered into the lock), gated and locked storage facilities, armed guards, and teams of elite responders if an attempt at theft were to occur. We know that most weapon states have such protections, and there is no reason to believe that such protections are missing in the remaining states, since no weapon state would want to put itself at risk of an unintended nuclear detonation of its own weapons by a malevolent agent. Thus, the likelihood of an unauthorized agent secretly planning a theft, without being discovered, and getting access to weapons with the intent and physical ability to carry them off in the face of such layers of protection is extremely low—but it isn’t impossible, especially in the case where the thief is an insider. The insider threat helped give credibility to the stories, circulating about 20 years ago, that there were “loose nukes” in the USSR, based on some statements by a Soviet general who claimed the regime could not account for more than 40 “suitcase nukes” that had been built. The Russian government denied the claim, and at this point there is no evidence that any nukes were ever loose. Now, it is unclear if any such weapon would even work after 20 years of corrosion of both the nuclear and non-nuclear materials in the device and the radioactive decay of certain isotopes. Because of the large number of terrorist groups operating in its geographic vicinity, Pakistan is frequently suggested as a possible candidate for scenarios in which a terrorist group either seizes a weapon via collaboration with insiders sympathetic to its cause, or in which terrorists “inherit” nuclear weapons by taking over the arsenal of a failed nuclear state that has devolved into chaos. Attacks by a terrorist group on a Pakistani military base, at Kamra, which is believed to house nuclear weapons in some form, have been referenced in connection with such security concerns (Nelson and Hussain, 2012). However, the Kamra base contained US fighter planes, including F-16s, used to bomb Taliban bases in tribal areas bordering Afghanistan, so the planes, not nuclear weapons, were the likely target of the terrorists, and in any case the mission was a failure. Moreover, Pakistan is not about to collapse, and the Pakistanis are known to have received major international assistance in technologies for protecting their weapons from unauthorized use, store them in somewhat disassembled fashion at multiple locations, and have a sophisticated nuclear security structure in place (see Gregory, 2013; Khan, 2012). However, the weapons are assembled at times of high tension in the region, and, to keep a degree of uncertainty in their location, they are moved from place to place, making them more vulnerable to seizure at such times (Goldberg and Ambinder, 2011). (It should be noted that US nuclear weapons were subject to such risks during various times when the weapons traveled US highways in disguised trucks and accompanying vehicles, but such travel and the possibility of terrorist seizure was never mentioned publicly.) Such scenarios of seizure in Pakistan would require a major security breakdown within the army leading to a takeover of weapons by a nihilistic terrorist group with little warning, while army loyalists along with India and other interested parties (like the United States) stand by and do not intervene. This is not a particularly realistic scenario, but it’s also not a reason to conclude that Pakistan’s nuclear arsenal is of no concern. It is, not only because of an internal threat, but especially because it raises the possibility of nuclear war with India. For this and other reasons, intelligence agencies in multiple countries spend considerable resources tracking the Pakistani nuclear situation to reduce the likelihood of surprises. But any consideration of Pakistan’s nuclear arsenal does bring home (once again) the folly of US policy in the 1980s, when stopping the Pakistani nuclear program was put on a back burner in order to prosecute the Cold War against the Soviets in Afghanistan (which ultimately led to the establishment of Al Qaeda). Some of the loudest voices expressing concern about nuclear terrorism belong to former senior government officials who supported US assistance to the mujahideen and the accompanying diminution of US opposition to Pakistan’s nuclear activities. Acquiring nukes as a gift. Following the shock of 9/11, government officials and the media imagined many scenarios in which terrorists obtain nuclear weapons; one of those scenarios involves a weapon state using a terrorist group for delivery of a nuclear weapon. There are at least two reasons why this scenario is unlikely: First, once a weapon state loses control of a weapon, it cannot be sure the weapon will be used by the terrorist group as intended. Second, the state cannot be sure that the transfer of the weapon has been undetected either before or after the fact of its detonation (see Lieber and Press, 2013). The use of the weapon by a terrorist group will ultimately result in the transferring nation becoming a nuclear target just as if it had itself detonated the device. This is a powerful deterrent to such a transfer, making the transfer a low-probability event. Although these first two ways in which terrorists might obtain a nuclear weapon have very small probabilities of occurring (there is no available data suggesting that terrorist groups have produced plans for stealing a weapon, nor has there been any public information suggesting that any nuclear weapon state has seriously considered providing a nuclear weapon to a sub-national group), the probabilities cannot be said to be zero as long as nuclear weapons exist. Manufacturing a nuclear weapon. To accomplish this, a terrorist group would have to obtain an appropriate amount of one of the two most popular materials for nuclear weapons, highly enriched uranium (HEU) or plutonium separated from fuel used in a production reactor or a power reactor. Weapon-grade plutonium is found in weapon manufacturing facilities in nuclear weapon states and is very highly protected until it is inserted in a weapon. Reactor-grade plutonium, although still capable of being weaponized, is less protected, and in that sense is a more attractive target for a terrorist, especially since it has been produced and stored in prodigious quantities in a number of nuclear weapon states and non-weapon states, particularly Japan. But terrorist use of plutonium for a nuclear explosive device would require the construction of an implosion weapon, requiring the fashioning of an appropriate explosive lens of TNT, a notoriously difficult technical problem. And if a high nuclear yield (much greater than 1 kiloton) is desired, the use of reactor-grade plutonium would require a still more sophisticated design. Moreover, if the plutonium is only available through chemical separation from some (presumably stolen) spent fuel rods, additional technical complications present themselves. There is at least one study showing that a small team of people with the appropriate technical skills and equipment could, in principle, build a plutonium-based nuclear explosive device (Mark et al., 1986). But even if one discounts the high probability that the plan would be discovered at some stage (missing plutonium or spent fuel rods would put the authorities and intelligence operations under high alert), translating this into a real-world situation suggests an extremely low probability of technical success. More likely, according to one well-known weapon designer,4 would be the death of the person or persons in the attempt to build the device. There is the possibility of an insider threat; in one example, a team of people working at a reactor or reprocessing site could conspire to steal some material and try to hide the diversion as MUF (materials unaccounted for) within the nuclear safeguards system. But this scenario would require intimate knowledge of the materials accounting system on which safeguards in that state are based and adds another layer of complexity to an operation with low probability of success. The situation is different in the case of using highly enriched uranium, which presents fewer technical challenges. Here an implosion design is not necessary, and a “gun type” design is the more likely approach. Fear of this scenario has sometimes been promoted in the literature via the quotation of a famous statement by nuclear physicist Luis Alvarez that dropping a subcritical amount of HEU onto another subcritical amount from a distance of five feet could result in a nuclear yield. The probability of such a yield (and its size) would depend on the geometry of the HEU components and the amount of material. More likely than a substantial nuclear explosion from such a scenario would be a criticality accident that would release an intense burst of radiation, killing persons in the immediate vicinity, or (even less likely) a low-yield nuclear “fizzle” that could be quite damaging locally (like a large TNT explosion) but also carry a psychological effect because of its nuclear dimension. In any case, since the critical mass of a bare metal perfect sphere of pure U-235 is approximately 56 kilograms, stealing that much highly enriched material (and getting away without detection, an armed fight, or a criticality accident) is a major problem for any thief and one significantly greater than the stealing of small amounts of HEU and lower-enriched material that has been reported from time to time over the past two decades, mostly from former Soviet sites that have since had their security greatly strengthened. Moreover, fashioning the material into a form more useful or convenient for explosive purposes could likely mean a need for still more material than suggested above, plus a means for machining it, as would be the case for HEU fuel assemblies from a research reactor. In a recent paper, physics professor B. C. Reed discusses the feasibility of terrorists building a low-yield, gun-type fission weapon, but admittedly avoids the issue of whether the terrorists would likely have the technical ability to carry feasibility to realization and whether the terrorists are likely to be successful in stealing the needed material and hiding their project as it proceeds (Reed, 2014). But this is the crux of the nuclear terrorism issue. There is no argument about feasibility, which has been accepted for decades, even for plutonium-based weapons, ever since Ted Taylor first raised it in the early 1970s5 and a Senate subcommittee held hearings in the late 1970s on a weapon design created by a Harvard dropout from information he obtained from the public section of the Los Alamos National Laboratory library (Fialka, 1978). Likewise, no one can deny the terrible consequences of a nuclear explosion. The question is the level of risk, and what steps are acceptable in a democracy for reducing it. Although the attention in the literature given to nuclear terrorism scenarios involving HEU would suggest major attempts to obtain such material by terrorist groups, there is only one known case of a major theft of HEU. It involves a US government contractor processing HEU for the US Navy in Apollo, Pennsylvania in the 1970s at a time when security and materials accounting were extremely lax. The theft was almost surely carried out by agents of the Israeli government with the probable involvement of a person or persons working for the contractor, not a sub-national terrorist group intent on making its own weapons (Gilinsky and Mattson, 2010). The circumstances under which this theft occurred were unique, and there was significant information about the contractor’s relationship to Israel that should have rung alarm bells and would do so today. Although it involved a government and not a sub-national group, the theft underscores the importance of security and accounting of nuclear materials, especially because the technical requirements for making an HEU weapon are less daunting than for a plutonium weapon, and the probability of success by a terrorist group, though low, is certainly greater than zero. Over the past two decades, there has been a significant effort to increase protection of such materials, particularly in recent years through the efforts of nongovernmental organizations like the International Panel on Fissile Materials6 and advocates like Matthew Bunn working within the Obama administration (Bunn and Newman, 2008), though the administration has apparently not seen the need to make the materials as secure as the weapons themselves. Are terrorists even interested in making their own nuclear weapons? A recent paper (Friedman and Lewis, 2014) postulates a scenario by which terrorists might seize nuclear materials in Pakistan for fashioning a weapon. While jihadist sympathizers are known to have worked within the Pakistani nuclear establishment, there is little to no evidence that terrorist groups in or outside the region are seriously trying to obtain a nuclear capability. And Pakistan has been operating a uranium enrichment plant for its weapons program for nearly 30 years with no credible reports of diversion of HEU from the plant. There is one stark example of a terrorist organization that actually started a nuclear effort: the Aum Shinrikyo group. At its peak, this religious cult had a membership estimated in the tens of thousands spread over a variety of countries, including Japan; its members had scientific expertise in many areas; and the group was well funded. Aum Shinrikyo obtained access to natural uranium supplies, but the nuclear weapon effort stalled and was abandoned. The group was also interested in chemical weapons and did produce sarin nerve gas with which they attacked the Tokyo subway system, killing 13 persons. Aum Shinrikyo is now a small organization under continuing close surveillance. What about highly organized groups, designated appropriately as terrorist, that have acquired enough territory to enable them to operate in a quasi-governmental fashion, like the Islamic State (IS)? Such organizations are certainly dangerous, but how would nuclear terrorism fit in with a program for building and sustaining a new caliphate that would restore past glories of Islamic society, especially since, like any organized government, the Islamic State would itself be vulnerable to nuclear attack? Building a new Islamic state out of radioactive ashes is an unlikely ambition for such groups. However, now that it has become notorious, apocalyptic pronouncements in Western media may begin at any time, warning of the possible acquisition and use of nuclear weapons by IS. Even if a terror group were to achieve technical nuclear proficiency, the time, money, and infrastructure needed to build nuclear weapons creates significant risks of discovery that would put the group at risk of attack. Given the ease of obtaining conventional explosives and the ability to deploy them, a terrorist group is unlikely to exchange a big part of its operational program to engage in a risky nuclear development effort with such doubtful prospects. And, of course, 9/11 has heightened sensitivity to the need for protection, lowering further the probability of a successful effort.

### !D---AT: States Give Away/Sell Nukes

#### No nuclear giveaways---way too risky.

Mueller 20, senior fellow at the Cato Institute, member of the political science department and senior research scientist with the Mershon Center for International Security Studies at Ohio State University. (John, 06/24/20, “Nuclear Alarmism: Proliferation and Terrorism”, *Cato Institute*, <https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism>)

Obtaining a Finished Bomb: Assistance by a State

One route a would‐​be atomic terrorist might take would be to receive or buy a bomb from a generous like‐​minded nuclear state for delivery abroad. That route is highly improbable, however, because there would be too much risk — even for a country led by extremists — that the ultimate source of the weapon would be discovered. As one prominent analyst, Matthew Bunn, puts it, “A dictator or oligarch bent on maintaining power is highly unlikely to take the immense risk of transferring such a devastating capability to terrorists they cannot control, given the ever‐​present possibility that the material would be traced back to its origin.” Important in this last consideration are deterrent safeguards afforded by “nuclear forensics,” which is the rapidly developing science (and art) of connecting nuclear materials to their sources even after a bomb has been exploded.35

Moreover, there is a very considerable danger to the donor that the bomb (and its source) would be discovered before delivery or that it would be exploded in a manner and on a target the donor would not approve of — including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence.36

In addition, almost no one would trust al Qaeda. As one observer has pointed out, the terrorist group’s explicit enemies list includes not only Christians and Jews but also all Middle Eastern regimes; Muslims who don’t share its views; most Western countries; the governments of Afghanistan, India, Pakistan, and Russia; most news organizations; the United Nations; and international nongovernmental organizations.37 Most of the time, it didn’t get along all that well even with its host in Afghanistan, the Taliban government.38

### !D---AT: Loose Nukes

#### No loose nukes---countermeasures solve.

Mueller 20, senior fellow at the Cato Institute, member of the political science department and senior research scientist with the Mershon Center for International Security Studies at Ohio State University. (John, 06/24/20, “Nuclear Alarmism: Proliferation and Terrorism”, *Cato Institute*, <https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism>)

Stealing or Illicitly Purchasing a Bomb: Loose Nukes

There has also been great worry about “loose nukes,” especially in postcommunist Russia — weapons, “suitcase bombs” in particular, that can be stolen or bought illicitly. A careful assessment conducted by the Center for Nonproliferation Studies has concluded that it is unlikely that any of those devices have been lost and that, regardless, their effectiveness would be very low or even nonexistent because they (like all nuclear weapons) require continual maintenance.39 Even some of those people most alarmed by the prospect of atomic terrorism have concluded, “It is probably true that there are no ‘loose nukes,’ transportable nuclear weapons missing from their proper storage locations and available for purchase in some way.“40

It might be added that Russia has an intense interest in controlling any weapons on its territory because it is likely to be a prime target of any illicit use by terrorist groups, particularly Chechen ones of course, with whom it has been waging a vicious on‐​and‐​off war for two decades. The government of Pakistan, which has been repeatedly threatened by terrorists, has a similar interest in controlling its nuclear weapons and material — and scientists. As noted by Stephen Younger, former head of nuclear weapons research and development at Los Alamos National Laboratory, “Regardless of what is reported in the news, all nuclear nations take the security of their weapons very seriously.“41 Even if a finished bomb were somehow lifted somewhere, the loss would soon be noted and a worldwide pursuit launched.

Moreover, finished bombs are outfitted with devices designed to trigger a nonnuclear explosion that would destroy the bomb if it were tampered with. And there are other security techniques: bombs can be kept disassembled with the components stored in separate high‐​security vaults, and security can be organized so that two people and multiple codes are required not only to use the bomb but also to store, maintain, and deploy it. If the terrorists seek to enlist (or force) the services of someone who already knows how to set off the bomb, they would find, as Younger stresses, that “only few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” Weapons designers know how a weapon works, he explains, but not the multiple types of signals necessary to set it off, and maintenance personnel are trained in only a limited set of functions.42

There could be dangers in the chaos that would emerge if a nuclear state were to fail, collapsing in full disarray — Pakistan is frequently brought up in this context and sometimes North Korea as well. However, even under those conditions, nuclear weapons would likely remain under heavy guard by people who know that a purloined bomb would most likely end up going off in their own territory; would still have locks (and in the case of Pakistan would be disassembled); and could probably be followed, located, and hunted down by an alarmed international community. The worst‐​case scenario in that instance requires not only a failed state but also a considerable series of additional permissive conditions, including consistent (and perfect) insider complicity and a sequence of hasty, opportunistic decisions or developments that click flawlessly in a manner far more familiar to Hollywood scriptwriters than to people experienced with reality.43

## Advantage 3

### 2NC---I/L D

#### Their I/L makes no sense---it’s that judicial discretion to do whatever in antitrust is bad, but the plan doesn’t stop that, they can only topically add labor concerns to antitrust but cannot get rid of the CWS. 1AC CX was a lie---the plan doesn’t make courts prioritize worker over consumer welfare.

#### No spillover---no ev they stop judicial activism in every other domaine of law.

#### The court inevitably does whatever they want

AFJ 19, \*Alliance For Justice, a progressive judicial advocacy group in the United States; (August 16th, 2019, “So Long Stare Decisis”, https://www.afj.org/article/so-long-stare-decisis/)

The promise to respect and follow precedent – made by so many of our nation’s nominees to the federal bench – has turned out to be a flexible vow for many. Strikingly, the additions of Justices Gorsuch and Kavanaugh to the Supreme Court seem to have made the Roberts Court more determined than ever to do away with the pesky little hurdle responsible for keeping vital public protections in place: precedent. The influence of these new justices has only amplified the tendency of the Court’s longstanding precedent skeptic, Clarence Thomas, to attack precedents he dislikes.

Whether it’s overturning 40-plus years of precedent related to public unions, or the growing threats to overturn 40-plus years of abortion rights under Roe v. Wade, the current Supreme Court has apparently decided that precedent is, in fact, malleable when it needs to fit the justices’ ideological preferences.

This concerning trend, which was publicly highlighted during the 2018 Supreme Court term, is especially troubling as we look toward the future SCOTUS term and the wave of important, precedent-reliant issues coming before the Court to resolve. These include whether draconian abortion bans are unconstitutional and if Roe v. Wade should be [overturned](https://www.vox.com/2019/7/24/20708762/arkansas-abortion-news-roe-wade-supreme-court); whether the Affordable Care Act is [constitutional](https://www.cnn.com/2019/04/10/politics/obamacare-supreme-court-2020/index.html); whether localities can impose [gun control](https://www.washingtonpost.com/politics/courts_law/new-york-eased-gun-law-hopeful-supreme-court-would-drop-second-amendment-case--but-that-hasnt-happened-yet/2019/08/10/9031682e-bab6-11e9-a091-6a96e67d9cce_story.html) measures regarding transporting weapons; and whether major [environmental](https://www.citizen.org/litigation/county-of-maui-v-hawaii-wildlife-fund/) and [Native American land rights](https://www.motherjones.com/media/2019/07/the-history-behind-the-supreme-court-showdown-over-tribal-land-is-bloody-and-violent-for-rebecca-nagle-its-also-personal/) should be overturned.

The justices’ respect – professed vs. actual – for precedent could have enormous impacts on the rights we care most deeply about and fight to protect.

Precedent, and the accompanying legal doctrine of “stare decisis,” (which is a trying-too-hard-to-be fancy, Latin-turned-legal term [meaning](https://thelawdictionary.org/stare-decisis/): “to stand by decided cases; to uphold precedents; to maintain former adjudications”) is a longstanding principle in United States law.  The basic idea is that any legal argument a lawyer makes, and a court upholds, should mesh with established law and conform to prior judicial decisions on that law; generally, the older the precedent, the more the prior judicial holding tends to be respected and followed.

There seems to be a growing trend amongst the conservative majority of the Roberts Court: To get confirmed, ardently support the idea of upholding precedent; then, to achieve what the conservative apparatus who put you on the bench wants, bulldoze any precedent you don’t like.

This practice isn’t terribly new for the Roberts Court: Prior to this term, the Court overturned decades of precedent in a variety of landmark cases, including: [Citizens United v. F.E.C.](https://scholar.google.com/scholar_case?case=14627663605033036164&q=Citizens+United+v.+F.E.C.&hl=en&as_sdt=20006) (2010) (overruling two key campaign finance precedents: [Austin v. Michigan Chamber of Commerce](https://scholar.google.com.br/scholar_case?case=3609582225306729508&q=Austin+v.+Michigan+Chamber+of+Commerce&hl=en&as_sdt=20006) (1990) and [McConnell v. Federal Election Commission](https://scholar.google.com.br/scholar_case?case=3309029737304712285&q=+McConnell+v.+Federal+Election+Commission&hl=en&as_sdt=20006) (2003)); Leegin Creative Leather Products v. PSKS, Inc. (2007) (overturning a 1911 anti-trust precedent in [Dr. Miles Medical Co. v. John D. Park & Sons Co.](https://scholar.google.com.br/scholar_case?case=3157705783244198338&q=dr.+miles&hl=en&as_sdt=20006)); and [Montejo v. Louisiana](https://scholar.google.com/scholar_case?case=17707055997036845959&q=Montejo+v.+Louisiana&hl=en&as_sdt=20006) (2009) (overturning a 1986 precedent regarding right to counsel established in [Michigan v. Jackson](https://scholar.google.com/scholar_case?case=13330333417461013941&q=michigan+v.+jackson&hl=en&as_sdt=20006)).

But the Roberts Court history of overturning precedent that doesn’t comport with its ideological agenda reached new heights during the 2018 SCOTUS term. For example, the Court overturned 40-plus years of precedent protecting public section unions in [Janus v. AFSCME](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf). The decision overruled [Abood v. Detroit Board of Education](https://scholar.google.com/scholar_case?case=5312655975467812361&q=City+of+Detroit+v.+Abood&hl=en&as_sdt=20006) which for decades had allowed public sector unions to collect fees from public employees for the purposes of collective bargaining and enforcing fair, safe conditions in the workplace. As Justice Kagan [explained](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf) in her powerful dissent, “Abood is not just any precedent: It is embedded in the law.” Her [dissent](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf) highlighted the sinister underpinnings of the majority’s opinion in Janus: “The majority overthrows a decision entrenched in this Nation’s law— and in its economic life—for over 40 years.” Kagan also powerfully highlighted how the “majority overruled Abood for no exceptional or special reason, but because it never liked the decision. It has overruled Abood because it wanted to.”

Then came the 2019 Supreme Court session, when Justice Brett Kavanaugh joined the bench after a confirmation process riddled with controversy, sexual assault claims, and threats of future political reprisal. Once again, the conservative majority freely thumbed their noses at precedent when it didn’t fit their ideological agendas. For example, Justice Thomas wrote the majority opinion in [Franchise Tax Bd. of Cal. v. Hyatt](https://scholar.google.com/scholar_case?case=13817744485807572486&q=Franchise+Tax+Board+of+California+v.+Hyatt&hl=en&as_sdt=20006&as_ylo=2019&as_vis=1) to overrule 40 years of precedent regarding when a state can be sued in another state. In his dissent, Justice Breyer argued that it is “dangerous to overrule a decision only because five Members of a later Court come to agree with earlier dissenters on a difficult legal question” and prophetically suggested how the “decision can only cause one to wonder which cases the Court will overrule next.”

And sure enough, a little over one month later in [Knick v. Township of Scott, Pennsylvania](https://scholar.google.com/scholar_case?case=6821535153814213570&q=Knick+v.+township+of+scott&hl=en&as_sdt=20006&as_ylo=2019&as_vis=1), the majority overruled 34 years of precedent to hold that litigants who allege local takings of their property by the state do not need to first bring their claim in a state court.  Justice Kagan, once again assuming the role of precedent-bodyguard, powerfully dissented from the majority’s trampling of decades-old precedent: “The majority today holds, in conflict with precedent after precedent, that a government violates the Constitution whenever it takes property without advance compensation—no matter how good its commitment to pay… it transgresses all usual principles of stare decisis.”

#### The Supreme Court doesn’t respect stare decisis---especially with ACB.

Ford 21, \*Matt Ford is a staff writer at The New Republic; (July 28th, 2021, “It Sure Looks Like Roe’s Foes Noticed That Amy Coney Barrett Is on the Supreme Court”, https://newrepublic.com/article/163084/amy-coney-barrett-dobbs-roe-abortion-rights)

When the state of Mississippi [first asked](https://www.supremecourt.gov/DocketPDF/19/19-1392/145658/20200615170733513_FINAL%20Petition.pdf) the Supreme Court to take up Dobbs v. Jackson Women’s Health Organization in March 2020, it argued that the court didn’t need to overturn Roe v. Wade to rule in favor of the state’s 15-week ban on abortions. The Supreme Court duly agreed in May to hear the case and decide “whether all pre-viability prohibitions on elective abortions are unconstitutional.” The dispute is now set to be the first major abortion-related case heard by the court, whose conservative majority has been newly bolstered by its sixth member, Amy Coney Barrett.

Barrett is the likely reason that Mississippi has suddenly starting singing a very different tune. Last week, the state suddenly switched up its plan of attack, arguing in [its brief for the court](https://www.supremecourt.gov/DocketPDF/19/19-1392/184703/20210722161332385_19-1392BriefForPetitioners.pdf) that “nothing in constitutional text, structure, history, or tradition supports a right to abortion” and that the only real barriers to the state’s ban are Roe and Planned Parenthood v. Casey, a 1992 case that reaffirmed and rewrote Roe’s central holding. “Roe and Casey are thus at odds with the straightforward, constitutionally grounded answer to the question presented,” Mississippi declared in its brief for the court. “So the question becomes whether this Court should overrule those decisions. It should.”

The state’s tactical about-face underscores the threat posed by Dobbs to Roe, Casey, and nearly a half-century of legalized abortion. Thirty-eight of the 49 pages in Mississippi’s brief are devoted to the case for overturning Roe and Casey. In theory, this should be a formidable task. The Supreme Court, following the example set by English courts before the revolution, decides cases by applying precedents from past cases to new sets of facts. Under the principle of stare decisis, the court is supposed to be extremely reluctant to overturn those precedents, even if later generations of justices think the reasoning behind them is dubious or erroneous.

That’s the A.P. Government explanation, at least. In reality, the high court’s approach to precedent is far more mercurial. At times, the justices hew closely to past decisions despite their clear misgivings about them, as some of the court’s conservatives did earlier this year when they declined to overturn a 1990 case that limits some types of religious freedom claims. In other instances, the justices jettison stare decisis altogether, as the court’s conservatives did earlier this year when they [overturned](https://newrepublic.com/article/162438/kavanaugh-kagan-spar-prisoner-precedent) a major criminal rights precedent—even though nobody had asked them to do it.

### 2NC---Resilient---US Democracy

#### Finishing Kroenig---democracy is reslilient

Kroenig 20, Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University. (Matthew, *The Return of Great Power Rivalry: Democracy versus Autocracy from the Ancient World to the U.S. and China*, pg. 198-199, Oxford University Press)

American Democracy

The United States is the world’s oldest constitutional democracy. Fleeing persecution by European monarchs, the American founding fathers set up a system to check and balance the chief executive. The authors of the U.S. constitution were also very much inspired by the mixed system of government that proved so successful for the ancient Roman Republic. Individuals are selected for political positions through competitive elections. Freedom of the press, assembly, and many other liberties help to ensure that citizens have the opportunity for meaningful political participation. According to Polity, the United States has been rated as a democracy for over two centuries.3

Contemporary warnings of a possible decline in American democracy should be taken seriously, but, on inspection, they are often overblown. To be sure, American democracy is imperfect, but democracy does not require perfection. It requires free and fair elections and the broad range of civil and political rights that allow for meaningful political participation. There is no doubt that the United States meets this standard.

Worries about a U.S. president’s putative autocratic tendencies are not new; they are baked into the system. America’s founders were revolting against overbearing British monarchs and they wanted to be sure to prevent an overwhelming concentration of power in the executive branch. George Washington was criticized for his presumed monarchic ambitions. More recently, commentators criticized George W. Bush for supposedly consolidating power and creating an “imperial presidency.”4 What is truly most notable about the U.S. system, however, is not executive overreach, but the degree to which Congress and the courts, and the executive branch itself, continually step in to check the chief executive

.5 This continues to remain true, even in the current era.

In sharp contrast to Russia, journalists do not have to worry that they will be shot in the back for criticizing the president. And, in distinction to China, the United States does not keep millions of Muslims locked up in re-education camps. It is perverse to draw a moral equivalence between democratic politicking in the United States and the gross evils perpetrated in Russia and China.

American democracy is strong enough to survive contemporary controversies and political scandals. There is little reason to believe that today’s headlines will be more damaging than the Teapot Dome Scandal, Watergate, Iran-Contra, or the Monica Lewinsky affair.

Indeed, contrary to the prevailing narrative, intense domestic political fights and polarization are not evidence that American democracy has failed; rather, they are proof that the system is working. Yes, democracy can be messy, but that is what makes the system great. These disagreements are not even permitted in autocratic states. Serious political conflicts of interest in autocracies often result in dead bodies. Our democratic political system gives us the ability to work out our differences through a mutually accepted and peaceful, institutionalized process. Legislative gridlock is not necessarily a problem. If half of the country strongly disagrees with a proposal, then it is not obviously a good idea, and probably should not become national law. The purpose of the U.S. government is not to enact legislation for its own sake but to ensure “life, liberty, and the pursuit of happiness.” By those measures the country is doing pretty well.

As Machiavelli argued five hundred years ago, discord within a republican system of government is not always pretty, but the results are more than worth it. Nations that desire expanded freedom at home and influence abroad should not rebuke domestic political struggles within a democracy, but celebrate them.

Indeed, the institutionalized tumult and discord in the United States will likely continue to be the primary engine for its continued international power and influence abroad.

#### Institutions and countervailing forces solve.

Gottlieb 11-11-2020, teaches international affairs and public policy at Columbia University. He formerly served as a foreign policy adviser and speechwriter in the United States Senate (1999-2003). (Stuart, "American Democracy: Still the envy of the world", *The Hill*, https://thehill.com/opinion/campaign/525572-american-democracy-still-the-envy-of-the-world)

Then the 2020 election actually happened.

And in an instant, it became clear (to paraphrase Mark Twain) that reports of the death of American Democracy had been greatly exaggerated.

Indeed, the results of the 2020 election, and the 2018 midterms that came before it, offer textbook validation of the unique democratic republic that America’s founders invented back in the 18th century. The durability of the system was once again shown in the way it naturally pushed back against the worst instincts of Trumpism, while also checking the potential for a massive Democratic overreach in response.

In the case of President Trump, his tendency was to govern with the reckless rhetoric of a strong-arm dictator. But the political institutions and natural democratic checks — cornerstones of the American political system — created roadblocks every step of the way.

So, while President Trump may have wanted to create a “total Muslim ban” for immigrants coming to the United States, that initiative was blocked by multiple courts, significantly watered down, and targeted for annulment by the new Democratic majority in the House of Representatives in 2019. And though he may have used inexcusable language regarding America’s free press (“enemy of the people”), tanks were never actually dispatched to surround the New York Times building in Manhattan — if anything, the press in this county has perhaps never been freer and more rambunctious than during the Trump presidency.

None of this is by mistake.

To America’s founders, like James Madison and Alexander Hamilton, one of the gravest potential threats to the republic was the rise of a corrupt demagogue-president who would use his “factious temper … local prejudices, or sinister designs” to cajole the American people toward tyranny. So, they put in place checks and balances between three co-equal branches of government (legislative, executive, and judicial); ensured that national elections were never more than two years away; and handed Congress the most important power in all of government: the power of the purse.

And now, this supposed “American Hitler,” will simply return to real estate and reality TV.

And American Democracy will simply return to what it has been doing for the past 230 years (including during the Trump years): holding elections, fighting over politics, and debating what’s best for the future of the country.

But the 2020 election is instructive for another critical reason. Many in this country, mostly on the coasts, viewed the rise of Donald Trump as the cause of America’s political consternation in recent years, rather than as a symptom of deep underlying disaffection with the direction of the country, in both domestic and foreign policy. They also came to view strong opposition to Mr. Trump from within traditional Republican and conservative strongholds (like the white suburbs) as a green light to begin planning for a permanent Democratic-progressive majority.

This misreading, and the shift of the Democratic Party decisively to the left in response, accounts for the starkly mixed results of the 2020 election: Yes, Democrats took back the White House, but the election was otherwise a near-disaster for the Democratic Party. Not only will Republicans most likely retain the Senate majority by two seats (stopping any progressive agenda dead in its tracks), they also picked up roughly 10 seats in the House — and gained strength at the local level in nearly every state.

Again, none of this is by mistake. This is the very “gridlock” system championed by James Madison, the most important architect of the U.S. Constitution. When one power center seems to be gaining too much strength, the natural tendency is for countervailing forces to jump in the way. As famously remarked by Virginia Congressman Tom Davis, who was swept to power in the 1994 Republican midterm landslide, “My constituents… elected me [in 1994] to protect them from Bill Clinton. And two years later they reelected Bill Clinton to protect them from me.” If the Democratic Party does not moderate its promises and expectations, they stand to lose much more in the 2022 midterms, and beyond.

Nearly two centuries ago, the French observer Alexis de Tocqueville stood in awe of what he called America’s great “experiment in democratic liberty.” He understood that what made American Democracy so “exceptional” in the world was not just that it was dominated by a mix of rowdy democratic passions and prudent middle-class values. It was that these forces operated within stable republican political institutions, which perennially check themselves.

Even in the chaotic “Age of Trump,” the wisdom of the American voter — and the genius of the American system — managed to fashion the most prudent of outcomes. The ongoing quest to create a “more perfect union” continues.

### Thumper---Laundry List

#### Disinformation, disruption, China and Russia, and Trump collapse democracy.

Diamond, 11-5-2020, Senior Fellow at the Hoover Institution and at the Freeman Spogli Institute for International Studies at Stanford University. (Larry, "A New Administration Won’t Heal American Democracy", *Foreign Affairs*, https://www.foreignaffairs.com/articles/2020-11-05/new-administration-wont-heal-american-democracy)

This is a season of Caesars and democratic discontent. The problem is made worse by the ill winds that have blown against democracy everywhere in the world of late: the pernicious influence of social media, which puts a premium on outrage and emotional engagement and hence has a natural affinity for disinformation; the multiple technological, economic, and environmental disruptions threatening people’s sense of self and security in what the journalist Thomas Friedman has called “the age of accelerations”; the rise of China and resurgence of Russia as authoritarian powers that see degrading and destabilizing democracy as an existential imperative; and the retreat from global responsibility of the country that in previous decades was the chief defender of embattled democracies—the United States.

Now the United States is experiencing its own democratic crisis. The thin but resilient membrane that protects the spinal cord of American democracy—the embrace of mutual tolerance and restraint, the steadfast commitment to the rules of the democratic game—is badly fraying. Whether or not a defeated Trump tries to overturn the Electoral College results in the courts or in Congress, come January American democracy will still be in serious trouble. And only the American people can fix it.

### 2NC---!D---Democracy

#### Democracy’s not peaceful---multilateral, quantitative studies show a negligible effect on conflict aversion. Prefer our models because they’re focused on system-level networks. Dyads are useless for measuring conflict---that’s Campbell.

#### Democracy’s NOT peaceful---they have no advantage over autocracies but have a propensity to go to war with autocracies.

Bakker ’17 (Femke; is an assistant professor at the Institute of Political Science @ University of Leiden; *Do liberal norms matter? A cross-regime experimental investigation of the normative explanation of the democratic peace in China and the Netherlands*; [https://openaccess.leidenuniv.nl/bitstream/handle/1887/74424/Bakker\_2017.pdf?sequence=1](about:blank); accessed 7/21/19; MSCOTT)

Concluding discussion

Democratic peace theory posits that individuals of liberal-democracies are socialized with liberal norms that nurture a peaceful attitude towards other democracies. Furthermore, it postulates that individuals in autocracies lack this socialization process and will consequently be more war prone towards all regime-types. Previous studies into this mechanism at microlevel found that democratic individuals are indeed more peaceful towards democracies during an interstate conflict. However, these studies have focused their research on democratic individuals only, and moreover have assumed the presence of liberal norms rather than measuring these. This research extends to those studies by measuring the level of liberal norms among democratic and autocratic individuals and compare the effect these norms have on the support for war within an experimental setting.

Indeed, the democratic experimental group showed to be more peaceful towards other democracies, just like previous studies showed. However, the comparative perspective brought a new insight: because the autocratic citizens were overall more peaceful towards all regime-types the comparison showed that actually the democratic participants were not more peaceful towards other democracies, but rather more war-prone towards autocracies. These 22 findings are important in the light of theoretical refinement, and show that we cannot simply assume autocratic individuals to be war prone, as democratic peace theory does (Maoz and Russett 1993, Russett 1993, p.35, Weart 1998, pp.81-83, Rousseau 2005, pp.27-28).

Secondly, the measuring of liberal norms showed that also autocratic individuals posses a level of liberal norms. The average of the autocratic group was indeed significantly lower than the democratic group, but the difference was small and had a small effect size. Most important contribution of this measurement is that liberal norms cannot be assumed to be absent within autocracies, as democratic peace theory does. Moreover, liberal norms showed to have only an effect within the democratic group: those with a higher level of liberal norms were more inclined to attack an autocracy over a democracy. Within the autocratic group, the level of liberal norms did not have any influence on the support for war.

These results show how important it is to indeed measure liberal norms and not simply assume these to be present or absent. Furthermore, these finding raise many questions that further research might be inspired by. If these results would hold when the experiment would be replicated for different samples of democratic and autocratic individuals, in other words: if democratic individuals show in new studies also to be triggered by autocracy to become more war prone, in particular when they endorse liberal norms more highly, we might have found more evidence for the argument that Western political rhetoric has molded democratic peace theory into a self-fulfilling prophecy, as was argued by several authors (Ish-Shalom 2006, Risse-Kappen 1995, Houghton 2007, Houghton 2009).

Another important extension to earlier studies is that this research has controlled for the threat of the conflict, after all, if a threat is not perceived as severe, why would anyone want to attack any other country? The results of that test showed actually more variance than initially anticipated, in other words: it had to be considered within the analyses of the data. Because a test showed that there was no relation between the perception of threat and the treatment of regime-type, perception of threat was taken into consideration as an independent variable. And threat matters, strongly. Within a multivariate test of all theorized indicators, perception of threat shows to be the most important indicator why democratic and autocratic individuals alike support war. It was actually so strong that the effect of regime-type and liberal norms that showed in the descriptive results, was faded out.

#### They’re wrong – democracies have gone to war before.

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)

But let us get back to my four cases of actual wars between democracies. One might concede that I am right yet still argue that this tiny number of wars does not substantially challenge the theory. This conclusion would be wrong, however, for reasons clearly laid out by the democratic peace theorist James L. Ray: “Since wars between states are so rare statistically . . . the existence of even a few wars between democratic states would wipe out entirely the statistical and therefore arguably the substantive significance of the difference in the historical rates of warfare between pairs of democratic states, on the one hand, and pairs of states in general, on the other.”16 Those four wars between democracies, in other words, undermine the central claim of democratic peace theorists.

The second major problem with democratic peace theory is that it offers no good explanation for why liberal democracies should not fight each other. Democratic peace theorists have put forward various explanations, some of which focus on democratic institutions and norms and others that emphasize liberal norms. But none are compelling.

Democratic Institutions and Peace

There are three institutional explanations for why liberal democracies do not go to war with each other. The first emphasizes that publics are pacific by nature, and if asked whether to initiate a war they will almost certainly say no. Kant articulates this argument in Perpetual Peace: “If the consent of the citizens is required in order to decide that war should be declared . . . nothing is more natural than that they would be very cautious in commencing such a poor game, decreeing for themselves all the calamities of war.”17 This argument was popular during the Cold War among neoconservatives, who believed that liberal democracies were inclined to appease authoritarian states because democratic peoples were not only soft but influential, because they could vote.18

The fatal flaw in this argument is that it proves too much. If the citizens of a liberal democracy were so averse to war, they would be disinclined to fight against non-democracies as well as democracies. They would not want to fight any wars at all. It is clear from the historical record, however, that this is not the case. The United States, for instance, has fought seven wars since the Cold War ended, and it initiated all seven. During that period it has been at war for two out of every three years. It is no exaggeration to say that the United States is addicted to war. Moreover, Britain, another liberal democracy, has been at America’s side throughout those wars. This helps explain why democratic peace theorists do not argue that democracies are generally more peaceful than non-democracies.

Several factors explain why democratic peoples sometimes favor starting wars. For one, there are sometimes good strategic reasons for war and most citizens will recognize them. Furthermore, democratic leaders are often adept at convincing reticent publics that war is necessary, even when it is not.19 Sometimes not much convincing is necessary, because the people’s nationalist fervor is so great that, if anything, they are pushing their leaders to go to war, whether necessary or not.20 Finally, it is wrong to assume that the public axiomatically pays a big price when its country goes to war. Wealthy countries often have a highly capitalized military, which means that only a small slice of the population actually serves. Moreover, liberal democracies are often adept at finding ways to minimize their casualties—for example, by using drones against an adversary. As for the financial costs, a state has many ways to pay for a war without seriously burdening its public.21

The second institutional explanation is that it is more difficult for government leaders to mobilize a democracy to start a war. This cumbersome decision making is partly a function of the need to get public permission, which is time-consuming given the public’s natural reluctance to fight wars and risk death. The institutional obstacles built into democracies, like checks and balances, slow down the process. These problems make it difficult not only to start a war but also to formulate and execute a smart foreign policy.

If these claims were true, again, democracies would not initiate wars against non-democracies. But they do. There may be instances where democratic inefficiencies prevent governing elites from taking their country to war, although as I noted above, that will happen infrequently. Moreover, the institutional impediments that might thwart leaders bent on starting a war usually count for little, because the decision to start a war is often made during a serious crisis, in which the executive takes charge and checks and balances, as well as individual rights, are subordinated to national security concerns. In an extreme emergency, liberal democracies are fully capable of reacting swiftly and decisively, and initiating a war if necessary.

Finally, some argue that “audience costs” are the key to explaining the democratic peace.22 This claim rests on the belief that democratically elected leaders are especially good at signaling their resolve in crises because they can make public commitments to act in particular circumstances, which they are then obligated to follow through on. In other words, they can tie their own hands. If they renege on their commitments, the public will punish them by voting them out of office. Once a leader draws a red line, the argument goes, his audience will hold his feet to the fire. Two democracies can thus make it clear to each other what exactly they would fight over, which allows them to avoid miscalculation and negotiate a settlement.

The audience-costs story is intuitively attractive, but empirical studies have shown that it has little explanatory power.23 There is hardly any evidence that audience costs have worked as advertised in actual crises. Moreover, there are many reasons to question the theory’s underlying logic. For example, leaders are usually wary about drawing red lines, preferring instead to keep their threats vague so as to maximize their bargaining space. In such cases, audience-costs logic does not even come into play. But even if a leader draws a red line and then fails to follow through, the public is unlikely to punish her if she ends the crisis on favorable terms. Moreover, one should never underestimate political leaders’ ability to spin a story so that it appears they did not renege on a commitment when they actually did. And even if a leader gives a signal, there is no guarantee the other side will read it correctly.

In sum, none of the mechanisms involving democratic institutions provides a satisfactory explanation for why democracies rarely fight wars with each other.24 Some prominent democratic peace theorists recognize the limits of these institutional explanations and instead rely on normative arguments linked to democracy and liberalism.25

#### Hawkishness controls the risk of war, and it’s just as high in democracies.

Bakker ’18 (Femke; is an assistant professor at the Institute of Political Science @ University of Leiden; *Hawks and Doves: Democratic Peace Theory Revisited*; [https://openaccess.leidenuniv.nl/bitstream/handle/1887/62051/FemkeBakker\_interactief.pdf?sequence=18](about:blank); accessed 7/21/19; MSCOTT)

Hawkishness

The strongest and most influential factor that influenced decision-makers to attack the opponent was the level of their hawkishness. The more hawkish decision-makers were, the willing they were to attack the opposing state. That effect was alike for all decision-makers, it was by far the best explanation for the willingness to attack. The effect was indeed even stronger within the US sample: the US decision-makers – although scoring lower on hawkishness on average- were significantly more influenced by hawkishness than the Russian and Chinese decision-makers. Hawkishness showed to be a robust factor when tested for other, less threatening, policy options. In every instance, it showed that being a hawk (or a dove when decision-makers preferred to negotiate) mattered significantly for the willingness to resolve the interstate conflict. The strength of the explanatory power, as measured by the effect size, decreased for options that were of lesser threat, and increased for options with a higher threat. The case-study illustrated this relationship. It showed that the hawkishness of Thatcher had plausibly influenced her decision-making process that led to the Falklands War. All in all, hawkishness showed to be a clear and generalizable factor for the decision-making process during a severe interstate conflict.

## Saving

### ---2NC---AT: Weinstein---Not Harsh Enough

#### Enforcement effect is identical to enacted statute.

Kathryn Watts 15, Garvey Schubert Barer Professor of Law at the University of Washington School of Law, “Rulemaking as Legislating,” The Georgetown Law Journal, Vol. 103, 2015, <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1035&context=faculty-articles>, pp. 1005-1007

When administrative agencies promulgate legislative rules,1 the rules look and feel much like congressionally enacted statutes,2 providing binding legal norms that govern nearly everything ranging from the quality of the air we breathe to the safety of the products we buy.3 Legislative agency regulations, for example, can bind courts and officers of the federal government, preempt state law, grant rights, and impose obligations enforceable by civil or criminal penalties.4 Yet despite the legally binding nature of legislative regulations, longstanding Supreme Court precedent refuses to embrace the notion that rulemaking constitutes an exercise of Article I “legislative Powers.”5 Instead, the Court insists that Congress cannot delegate its legislative powers and that rulemaking activities by administrative agencies must constitute exercises of the “executive Power” found in Article II of the Constitution.6 The Court’s most recent pronouncement to this effect came in 2013 in City of Arlington v. FCC when the Court noted that although agency rulemaking takes a “legislative form,” such rulemaking activities “are exercises of—indeed, under our constitutional structure they must be exercises of—the ‘executive Power.’”7 As the Court’s opinion in City of Arlington suggests, constitutional concerns help to explain the Court’s stubborn adherence to its longstanding view that rulemaking constitutes an incident of executive rather than legislative power. Specifically, the nondelegation doctrine insists that Congress may not delegate legislative power because Article I, Section One of the Constitution vests the legislative power in Congress, not elsewhere.8 In its modern form, the nondelegation doctrine also provides that there is no forbidden delegation of legislative power so long as Congress provides some kind of an “intelligible principle” to guide the agency in its execution of the law.9 In other words, if Congress sets forth some kind of a guiding principle—even a hopelessly vague standard like, say, regulate “in the public interest”10—then the courts declare agency rulemaking to be constitutionally permissible as an incident of executive functions.11 It is through this reading of legislative powers that the Court is able to insist that Congress may not delegate legislative powers and, at the same time, routinely rubber stamp wide-ranging delegations of rulemaking power to agencies.12

### ---2NC---AT: Corporate Capture Deficit

#### American corporations bought out judges and FTC

Root 19 [Danielle Root, director of voting rights and access to justice on the Democracy and Government Reform team at the Center for American Progress. Sam Berger, vice president of Democracy and Government Reform at the Center for American Progress. “Structural Reforms to the Federal Judiciary.” 5/8/2019. https://www.americanprogress.org/issues/courts/reports/2019/05/08/469504/structural-reforms-federal-judiciary/]

Discussions of the federal judiciary often focus on the substance of decisions made—which side wins and which side loses—and rightly so. These individual opinions are frequently of incredible importance, not just to the parties involved but in shaping the law more broadly. Yet this focus on substantive decisions has obscured deeper structural factors at play in the nation’s federal judiciary. Structural problems—such as lack of judicial diversity, ideologue judges, and lack of judicial accountability—undercut the courts’ legitimacy and have tangible negative effects on judicial decision-making. Instead of protecting everyday Americans by serving as a check on abuses of power, too often the federal courts have become a tool for carrying out the agendas of special interests and corporations.

Structural problems with the judiciary have always existed to varying degrees. But they have been exacerbated in recent years due to an ongoing campaign by conservatives to take control of the federal courts, often through procedural changes that have significant effects but garner little public attention. The problem has now reached a crisis point. Conservatives have shown a willingness to abandon any and all norms to undermine the judicial nominations process and pack the courts with judges who will help them realize political goals they cannot achieve through the political process. These judges have proven more than willing to carry out the task, supporting the most specious of legal claims in order to skew the system in favor of conservative interests

#### DOJ/FTC are subject to capture concerns too

Beaty 9-16-2021, research assistant at the Revolving Door Project (Andrea, “Closing the Revolving Door in Antitrust,” *Prospect*, <https://prospect.org/economy/closing-the-revolving-door-in-antitrust/>)

But below the high-profile leaders of Biden’s antitrust agenda, the FTC and DOJ contain many other influential positions that have long been filled with corporate allies. As I explore in a forthcoming white paper for the Revolving Door Project, an alarming number of the lawyers and economists who handle the day-to-day enforcement duties of the antitrust agencies end up switching sides to work for the economic consulting and law firms that represent the very corporations the FTC and DOJ are charged with overseeing. One position that’s had a particularly questionable track record is that of deputy assistant attorney general for economic analysis. The so-called “DAAG”—everything in DC comes with an intentionally obscuring acronym—oversees the Antitrust Division’s Economic Analysis Group, a team of economists who incorporate “internal corporate data, business documents, and information from interviews of executives to understand and model competition.” The economists’ analysis is crucial to the DOJ’s investigations into corporations seeking to merge. Upon his confirmation, Kanter will have the opportunity to pick a new chief economist to lead the Economic Analysis Group. Hopefully, his DAAG pick will differ significantly from the predecessors, who overwhelmingly went on to use their expertise on behalf of private economic consulting firms once they’d left the DOJ. Under the judiciary’s current dominant consumer welfare standard, much of the question of what is anti-competitive action and what isn’t boils down to how it affects prices for consumers. This paradigm means the opinion of economists is highly valued. And by highly valued, I mean extremely lucrative. Consulting firms such as Compass Lexecon and Bates White hire economists and antitrust academics to provide analysis and testimony for clients, charging the clients potentially thousands of dollars an hour. To be clear, the consultants are paid by the firms trying to merge. They aren’t hired to produce or follow independent and scrutinizing analysis wherever it leads; they’re paid to find a reason why their clients’ mergers should be approved. ProPublica found that former DAAG for Economic Analysis Dennis Carlton and Compass Lexecon charged $1,350 an hour in 2014 for his expert witness services; his clients include AT&T in its mergers with Time Warner and SBC Communications. While many of these firms’ consultants appear to be plucked from academia, they also frequently have experience as FTC and DOJ economists. Antitrust economists with public-sector experience are in high demand by economic consulting firms. How high? Looking at the 20 most recent economists to work as the deputy assistant attorney general for economic analysis, we found that 17 went on to work for an economic consulting firm. In other words, 85 percent of people who’ve directed the economics group charged with overseeing merger enforcement have gone on to take jobs that serve to undermine the independent analysis of that division. One DAAG, Nancy Rose, has apparently not joined a firm since leaving the DOJ—but before her tenure as DAAG, she was on the board of one of the most prominent economic consulting firms, Charles River Associates, for ten years. The two chief economists with no apparent ties to an economic consulting firm are Ken Heyer, who served as DAAG in both 2004 and 2008, and Elizabeth “Babette” Boliek. Boliek was appointed by former Assistant Attorney General Makan Delrahim shortly before he left, making her one of three Trump-allied officials who temporarily led Biden’s Antitrust Division after the transition. Boliek left the position only two months into the job. The rest of the former chief economists joined firms like Charles River, Bates White, and Compass Lexecon after leaving the position. This means that since 1983, all but two DAAGs were tied to an economic consulting firm with an antitrust practice. Who exactly do these former public officials take on as clients at the consulting firms? Both corporations and the federal government depend on expert witnesses to win antitrust cases. While most information on economic consulting firm clients is self-reported and difficult to comprehensively track, the Cornerstone Research biography of Aviv Nevo, one of the Obama-era DAAGs, gives us an idea of how often former public officials wield their experience to benefit corporations. Nevo lists eight cases he consulted on with Cornerstone Research. In three of the cases, he represented the FTC or DOJ. In the other five cases, he represented corporations before the FTC or DOJ, namely Qualcomm, Cigna, 21st Century Fox, Bain Capital, and the Commercial Metals Company. The revolving door between economic consulting firms and antitrust enforcement presents problems that illustrate the need for the cultural change that must occur if the DOJ and FTC are to become entities that aggressively and emphatically challenge corporate dominance.

# 1NR

## 1NR---Tradeoff DA

### 1NR---Overview

#### DA outweighs and turns case---food shortages catalyze feedback loops of terrorism, refugee spread, and instability that spirals to existential nuclear war.

#### Independent of war, ag decline kills billions

Lugar 4 – Richard G. Lugar, U.S. Senator from Indiana and Former Chair of the Senate Foreign Relations Committee, “Plant Power”, Our Planet, 14(3), http://www.unep.org/ourplanet/imgversn/143/lugar.html

To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare. Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases. But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world. The United States can take a leading position in a productivity revolution. And our success at increasing food production may play a decisive humanitarian role in the survival of billions of people and the health of our planet.

#### Turns democracy, populism, and terrorism---all three advantages.

Lehane 17, is research manager for Future Directions International’s Global Food and Water Crises Research program. Her current research projects include Australia’s food system and water security in the Tibetan Plateau region. (Sinéad, 2-2-2017, Shaping Conflict in the 21st Century – The Future of Food and Water Security. www.hidropolitikakademi.org/shaping-conflict-in-the-21st-century-the-future-of-food-and-water-security.html)

In his book, The Coming Famine, Julian Cribb writes that the wars of the 21st century will involve failed states, rebellions, civil conflict, insurgencies and terrorism. All of these elements will be triggered by competition over dwindling resources, rather than global conflicts with clearly defined sides. More than 40 countries experienced civil unrest following the food price crisis in 2008. The rapid increase in grain prices and prevailing food insecurity in many states is linked to the outbreak of protests, food riots and the breakdown of governance. Widespread food insecurity is a driving factor in creating a disaffected population ripe for rebellion. Given the interconnectivity of food security and political stability, it is likely food will continue to act as a political stressor on regimes in the Middle East and elsewhere. Addressing Insecurity Improving food and water security and encouraging resource sharing is critical to creating a stable and secure global environment. While food and water shortages contribute to a rising cycle of violence, improving food and water security outcomes can trigger the opposite and reduce the potential for conflict. With the global population expected to reach 9 billion by 2040, the likelihood of conflict exacerbated by scarcity over the next century is growing. Conflict is likely to be driven by a number of factors and difficult to address through diplomacy or military force. Population pressures, changing weather, urbanization, migration, a loss of arable land and freshwater resources are just some of the multi-layered stressors present in many states. Future inter-state conflict will move further away from the traditional, clear lines of military conflict and more towards economic control and influence.

### Add on

#### Strong public health infrastructure prevents bioterror attacks

Kosal 14, Adjunct Scholar to the Modern War Institute at the US Military Academy/West Point, Ph.D. in Chemistry from the University of Illinois at Urbana Champaign, Associate Professor at The Sam Nunn School of International Affairs at Georgia Tech (Margaret E. Kosal, “A New Role For Public Health in Bioterrorism Defense,” Frontiers in Public Health, Volume 2, Article 278)

In thinking about public health infrastructure as an active or passive part of new deterrence strategies, it is useful to think about the role of missile defense. As the presence of a ballistic missile defense system is supposed to be an existential deterrent itself, so could be a strong public health system. Missile defense is both a passive deterrent and, if used, an active deterrent, as it stops something from occurring. A strong public health infrastructure is likely to be the key in reducing the vulnerability to bioterrorism attack, as well as having a potential role in deterring a foreign terrorist group from even considering such an attack. If a biological weapon launched by a terrorist group will have little or no effect on the target country because of a known robust public health sector, then a foreign terrorist may be discouraged from launching a biological weapons attack in the first place. If foreign terrorists are also aware of the weak public health infrastructure with their own borders, and the increased risks to them and their publics in the event of an accident in developing biological weapons and/or spread of an infectious disease that they might launch, this may also deter them from pursuing this work. In addition, even the accidental release of a dangerous pathogen or the spread of an infectious disease via attack will most likely cause disproportional negative effects to nations with limited public health infrastructures and affect tacit and explicit supporters in those states. The role of a robust public healthcare system for its deterrence capacity can be explored through empirically driven case study methods against predominant theories of deterrence in political science (14, 15) and in comparison to other works considering the possibility of deterring bioterrorism (16–20). For example, the re-emergence of polio offers a potentially useful example to think about the effects of a potential bioterrorist attack on the developed and the developing world. Polio is both a contagious infectious disease and transmissible from human-to-human (like smallpox and plague). The poliovirus is highly transmissible with a basic reproductive rate or secondary transmission rate (R0) exceeding most suspected biological agents, e.g., standard estimates of R0 for polio range from 5 to 7 (21, 22), whereas R0 for suspected bioterrorist agents like smallpox (1.8–3.2) (23–25); pneumonic plague (0.8–3.0) (26, 27); and even Ebola (1.34–2.0) (28, 29) are lower. It is not a likely biological terrorism agent, however, due to the low-mortality associated with infection. It is, however, a useful model for thinking about the spread of infectious disease and the importance of a robust public health infrastructure as a deterrence strategy. At the beginning of 2003, the complete eradication of polio appeared to be within the grasp of the World Health Association and its many partners. In 1998, the World Health Organization estimated there were over 365,000 new cases of polio; by early 2003, the rate of infection had declined to <1,000 new cases worldwide due to a vigilant vaccination effort (30). That trend was interrupted, however, when Nigerian citizens refused to be vaccinated after hearing unfounded allegations of contaminated vaccines that would lead to sterility or cause HIV/AIDs. Before 2003, polio had largely been confined to only a handful of countries; Nigeria, India, Pakistan, and Afghanistan accounted for 93% of the world’s cases (31). What started with the refusal of local clerics to allow vaccination led to the reestablishment or importation of the poliovirus to 14 countries that were previously disease-free. Transport of the contagious virus was not limited to neighboring African states. The poliovirus moved through Sudan to Ethiopia crossing the Red Sea to Lebanon and Yemen. The latter was been particularly severely affected, witnessing more than 500 new cases in the first half of 2005. The poliovirus spread as far as Indonesia, where it afflicted more than 150 people in a single year in 2 provinces, predominantly children (32). Prior to this outbreak, Indonesia had been polio free for nine years. Genetic fingerprinting confirmed that the strain imported to Indonesia came from northern Nigeria through Sudan, most closely resembling an isolate recovered in Saudi Arabia in December 2004. A pilgrim returning from Mecca or a returning foreign worker is suspected to have brought the virus to the island of Java, across an ocean and thousands of miles from its source. The polio virus continues to persist in a limited number of states in the developing world, specifically in Nigeria, Afghanistan, and Pakistan, where a ban on vaccination by Islamist leaders in Waziristan remains in place. Since 2013, polio (linked genetically to the strain in Pakistan) has spread from Syria to Iraq (33). Countries that have witnessed the re-emergence of poliovirus outbreaks have some crucial links: social and political challenges that have impeded the development and implementation of appropriate public health infrastructures and measures. Not unexpectedly, there is an inverse relationship between government health expenditure in health and number of polio cases. Looking at the spread of polio can provide us with a lens to think about the impacts of bioterrorism in states with developed public health infrastructures and those who do not. A bioterrorist attack, especially one with a contagious agent like smallpox or pneumonic plague, will likely impact the developing parts of the world substantially more than the US. One only has to look as far as polio’s re-emergence (or more recently the outbreak of Ebola virus disease in West Africa) to see the very real repercussions of a contagious virus and how the most dire causes and effects of infection and spread stem from poor public health infrastructures (34). Creating a new deterrence strategy for bioterrorism is needed. Credibly, communicating the differential capacities to respond and the comparative likely outcomes will require diplomacy, coordination with civil affairs, specialized knowledge of individual states, and regions of the developing world. These are fundamentally interdisciplinary efforts that should leverage small teams from diplomatic, development, public health, and defense communities. One single parochial voice will be inadequate. Further improving the US domestic public health infrastructure would be beneficial and cost effective regardless of whether an outbreak is intentional or natural. The devastating Ebola outbreaks serve as a call for urgent investment in public health infrastructures worldwide, to provide both responsive and proactive actions to deter bioterrorism and to deal with natural disease outbreaks. Public health remains a powerful and often underutilized asset for bioweapons defense through vulnerability reduction; leveraging public health may also enable new approaches to deterring bioterrorism threats. International security scholars would benefit from better understanding of and leveraging the knowledge of the public health community.

#### Extinction without early response

Farmer 17 (“Bioterrorism could kill more people than nuclear war, Bill Gates to warn world leaders” http://www.telegraph.co.uk/news/2017/02/17/biological-terrorism-could-kill-people-nuclear-attacks-bill/)

Bioterrorists could one day kill hundreds of millions of people in an attack more deadly than nuclear war, Bill Gates will warn world leaders. Rapid advances in genetic engineering have opened the door for small terrorism groups to tailor and easily turn biological viruses into weapons. A resulting disease pandemic is currently one of the most deadly threats faced by the world, he believes, yet governments are complacent about the scale of the risk. Speaking ahead of an address to the Munich Security Conference, the richest man in the world said that while governments are concerned with the proliferation of nuclear and chemical weapons, they are overlooking the threat of biological warfare. Mr Gates, whose charitable foundationis funding research into quickly spotting outbreaks and speeding up vaccine production, said the defence and security establishment “have not been following biology and I’m here to bring them a little bit of bad news”. Mr Gates will today (Saturday) tell an audience of international leaders and senior officers that the world’s next deadly pandemic “could originate on the computer screen of a terrorist”. He told the Telegraph: “Natural epidemics can be extremely large. Intentionally caused epidemics, bioterrorism, would be the largest of all. “With nuclear weapons, you’d think you would probably stop after killing 100million. Smallpox won’t stop. Because the population is naïve, and there are no real preparations. That, if it got out and spread, would be a larger number.” He said developments in genetic engineering were proceeding at a “mind-blowing rate”. Biological warfare ambitions once limited to a handful of nation states are now open to small groups with limited resources and skills. He said: “They make it much easier for a non-state person. It doesn’t take much biology expertise nowadays to assemble a smallpox virus. Biology is making it way easier to create these things.” The increasingly common use of gene editing technology would make it difficult to spot any potential terrorist conspiracy. Technologies which have made it easy to read DNA sequences and tinker with them to rewrite or tweak genes have many legitimate uses. He said: “It’s not like when someone says, ‘Hey I’d like some Plutonium’ and you start saying ‘Hmmm.. I wonder why he wants Plutonium?’” Mr Gates said the potential death toll from a disease outbreak could be higher than other threats such as climate change or nuclear war. He said: “This is like earthquakes, you should think in order of magnitudes. If you can kill 10 people that’s a one, 100 people that’s a two... Bioterrorism is the thing that can give you not just sixes, but sevens, eights and nines. “With nuclear war, once you have got a six, or a seven, or eight, you’d think it would probably stop. [With bioterrorism] it’s just unbounded if you are not there to stop the spread of it.” By tailoring the genes of a virus, it would be possible to manipulate its ability to spread and its ability to harm people. Mr Gates said one of the most potentially deadly outbreaks could involve the humble flu virus. It would be relatively easy to engineer a new flu strain combining qualities from varieties that spread like wildfire with varieties that were deadly. The last time that happened naturally was the 1918 Spanish Influenza pandemic, which went on to kill more than 50 million people – or nearly three times the death toll from the First World War. By comparison, the recent Ebola outbreak in West Africa which killed just over 11,000 was “a Richter Scale three, it’s a nothing,” he said. But despite the potential, the founder of Microsoft said that world leaders and their militaries could not see beyond the more recognised risks. He said: “Should the world be serious about this? It is somewhat serious about normal classic warfare and nuclear warfare, but today it is not very serious about bio-defence or natural epidemics.” He went on: “They do tend to say ‘How easy is it to get fissile material and how accurate are the plans out on the internet for dirty bombs, plutonium bombs and hydrogen bombs?’ “They have some people that do that. What I am suggesting is that the number of people that look at bio-defence is worth increasing.” Whether naturally occurring, or deliberately started, it is almost certain that a highly lethal global pandemic will occur within our lifetimes, he believes. But the good news for those contemplating the potential damage is that the same biotechnology can prevent epidemics spreading out of control. Mr Gates will say in his speech that most of the things needed to protect against a naturally occurring pandemic are the same things needed to prepare for an intentional biological attack. Nations must amass an arsenal of new weapons to fight such a disease outbreak, including vaccines, drugs and diagnostic techniques. Being able to develop a vaccine as soon as possible against a new outbreak is particularly important and could save huge numbers of lives, scientists working at his foundation believe.

### 1NR---IL

#### Limiting hospital mergers is key---

#### Health care consolidation causes price gouging, which decreases quality of care. Rural hospitals will be worst it---Numerof.

#### Rural health security is key to ag exports---bad healthcare shreds the labor force that produces food for the globe---Lichtenwald.

### 1NR---AT: Biden Thumps

#### 2AC ev says squo is extremely burdensome for COMPANIES, and actually SAVES FTC resources (KANSAS)

Bruce 2AC Sokler & Farrah Short 10-1. \*Chair of the Antitrust Section and in his over 30 years in private practice, he has developed extensive experience in both antitrust and communications regulation, including associated First Amendment and copyright law matters. \*Specializes in counseling clients through the Hart-Scott-Rodino (HSR) merger review process at the U.S. Federal Trade Commission and the U.S. Department of Justice, including responding to Second Requests and providing substantive antitrust risk analysis for strategic acquisitions. “FTC Promises More Rigorous Merger Reviews”. National Law Review. 10-1-2021. <https://www.natlawreview.com/article/ftc-promises-more-rigorous-merger-reviews>

**A** blog **post from the** Federal Trade Commission (“**FTC**”) on Tuesday was the latest announcement **suggesting** that **a shake-up is underway for the agency’s merger review process.** **The post stated** that **the FTC’s Bureau of Competition is instituting new process reforms to make** the **merger review** process **more rigorous and streamlined.** According to the post, the change was triggered by the need to best use the agency’s limited resources in light of the recent surge in merger filings. **This message is consistent with** other recent changes and **statements** from the antitrust enforcement agency **suggesting** that **businesses should not expect** **“business as usual” for merger reviews.**

**The** Hart-Scott-Rodino (“**HSR**”) Act **requires parties engaged in certain transactions** (including mergers, asset acquisitions, investments, joint ventures, and exclusive licensing deals) **to file an** HSR **notification** with the FTC and the Antitrust Division of the Department of Justice (“DOJ”), **and** to **observe a 30-day statutorily prescribed** waiting **period** (15 days in the case of cash tender offers and bankruptcy) prior to closing, if jurisdictional thresholds are met. The HSR process is designed to afford the agencies an opportunity to review proposed transactions for potential harm to competition. The **agencies may seek** **additional information** beyond the initial notification in a process **known as a “Second Request,”** which is similar to a very broad subpoena for information, data, and documents. **The parties may not consummate their transaction while a Second Request investigation is pending**. **Responding to a Second Request is** typically **extremely burdensome in terms of cost** (often in the millions of dollars for legal advisors, economic experts, and e-discovery vendors), **time** (complying can often take six months or more), **disruption to the business, and delay of the transaction.**

The FTC predicts that it may receive as many as 3,500 HSR notifications in 2021 — this is up from nearly 2,000 in 2020, which was double the number seen in 2010. According to the blog post, this surge in mergers is straining the regulators’ ability to challenge all anticompetitive deals. To address this challenge, **the FTC is making the following changes to** its merger review process:

* **The FTC may broaden the scope** of Second Requests “**to ensure** [their] **merger reviews are more comprehensive and analytically rigorous**.” This might include **a focus on how a** proposed **merger will affect labor markets**, the cross-market effects of the transaction, and how the involvement of investment firms may affect market incentives to compete. Historically, **these areas** typically **have not been part of the focus of** Second Requests and **merger investigations**. **Businesses should anticipate that the** already broad **scope of Second Requests will expand even further**.
* Modifications to narrow the scope of a Second Request will only be considered by FTC staff after certain “foundational information” is provided by the merging parties. It is common for merging parties to negotiate down the scope of Second Requests to reduce the burden and provide only information necessary for the agency’s antitrust review. **The statement suggests that merging parties may have to overcome additional hurdles** in order **to receive** any such **modifications**.

### 1NR---AT: Thumper---Merger Wave

#### In response to the wave of merger filings, the FTC is being selective about which mergers it will review. Levine says they are focused on reviewing healthcare filings now, so this is not a thumper.

Holly Vedova 8/3, Director of the Bureau of Competition at the Federal Trade Commission, JD from the George Mason University School of Law, 8/3/2021, “Adjusting merger review to deal with the surge in merger filings,” <https://www.ftc.gov/news-events/blogs/competition-matters/2021/08/adjusting-merger-review-deal-surge-merger-filings>

Given the recent surge in merger filings, the FTC is reviewing its processes to determine how best to use its limited resources.

The FTC reviews mergers per the Hart-Scott-Rodino (HSR) Act, which requires that companies provide the FTC and Department of Justice with advance notice of certain transactions above a certain threshold. ([The current minimum size-of-transaction threshold is $92 million](https://www.ftc.gov/system/files/attachments/current-thresholds/current_2021_thresholds.pdf).) After the merging parties submit a filing with information about the transaction, the statute generally gives the agencies 30 days to pursue an initial investigation and determine whether additional information is needed to evaluate the transaction. If the FTC or DOJ seeks additional information through what’s known as a “second request,” the deal is then put on hold until the companies have fully complied with the additional investigatory request. Once the parties have submitted all of the additional information, the reviewing agency has a limited number of days to file a complaint challenging the proposed merger ahead of its consummation. The purpose of this process is to give the FTC and DOJ time to identify illegal mergers prior to their consummation. However, the law permits the antitrust agencies to determine that a merger is illegal even after the companies have merged and even if the merger was subject to premerger review. When the FTC does not challenge a transaction prior to its consummation, this does not constitute an “approval” or “clearance” of the deal, and the agency maintains the right to challenge a deal regardless of whether it was initially investigated. The FTC always has the right to take such further action as the public interest may require.

This year, the FTC has been hit by a tidal wave of merger filings that is straining the agency’s capacity to rigorously investigate deals ahead of the statutory deadlines. (We now post [our monthly HSR figures](https://www.ftc.gov/enforcement/premerger-notification-program) on the website and they are astounding.) We believe it is important to be upfront about these capacity constraints. For deals that we cannot fully investigate within the requisite timelines, we have begun to send standard form letters alerting companies that the FTC’s investigation remains open and reminding companies that the agency may subsequently determine that the deal was unlawful

l. Companies that choose to proceed with transactions that have not been fully investigated are doing so at their own risk. Of course, this action should not be construed as a determination that the deal is unlawful, just as the fact that we have not issued such a letter with respect to an HSR filing should not be construed as a determination that a deal is lawful.

#### No thumpers:

#### 1---priced in---other antitrust enforcement now happens alongside health care enforcement. The things listed in their evidence are incredibly small---drugs, airlines---those will take a backseat to healthcare and big tech now.

#### 2---the link is massive and outweighs thumpers---at best, thumpers marginally change FTC focus, but the aff completely rewrites how every antitrust case is universally evaluated.

#### 3---thumpers are aff uniqueness---they’re proof of finite resources.

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

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

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

#### Health care enforcement is coming now---but it could be triaged in the case of overstretch

Galvin 9-10-2021 (Gaby, “Hospitals, Other Health Care Players Are Seeing ‘the Bar of Scrutiny’ Raised by Biden Regulators,” *Morning Consult*, <https://morningconsult.com/2021/09/10/health-care-antitrust-biden-administration/>)

When President Joe Biden tapped vocal critics of big tech companies for key antitrust roles, companies like Amazon.com Inc. went on high alert. But he’s pledged to crack down on anticompetitive behavior across sectors — including “unchecked mergers” in health care, and former officials and industry watchers say hospitals and other groups should tread carefully. Officials like Lina Khan, who was sworn in as chair of the Federal Trade Commission in June, and Tim Wu of the White House’s National Economic Council, haven’t gone public with how they plan to tackle health care consolidation. But early action from the administration points to hospital price transparency and heightened merger scrutiny as top priorities. “This administration is going to take a stronger approach to any antitrust enforcement than we’ve previously seen,” said Alexis Gilman, an antitrust lawyer at Crowell & Moring who worked in the FTC’s competition bureau, primarily during the Obama administration. “The bar of scrutiny does seem to have been raised.” Biden laid out his broad antitrust agenda in an executive order in July that singled out rural hospital closures and higher hospital prices in markets with little competition as reasons to support stronger FTC guidelines for health care mergers. Now, Gilman said the FTC appears to be taking more time to review details on proposed mergers that may have otherwise been cleared quickly or seen as “non-problematic.” The FTC’s public stances so far “reflect an agency that believes that prior enforcement has been a bit lax, and they’re going to tighten that up,” Gilman said. Health systems feeling the heat Industry watchers are taking cues from Sutter Health’s $575 million antitrust settlement, which received final approval from a federal judge in late August after a yearslong legal battle over allegations that the nonprofit health system in California engaged in price gouging. Notably, Health and Human Services Secretary Xavier Becerra sued Sutter Health in 2018 when he was California’s attorney general, and before joining the Biden administration, he said in March that he would continue to promote health care competition so patients “aren’t left holding the bag when big players dominate the market.” Given Becerra’s involvement, the case could offer a roadmap for health care competition policy in the Biden era at both the state and federal levels, said Elizabeth Mitchell, president and chief executive of the Purchaser Business Group on Health, which helped bring together employers and unions to file the lawsuit against Sutter Health. “I think it is very important that some of what we achieved in the Sutter case is applied more broadly,” Mitchell said. That includes efforts to promote hospital price transparency, a priority left over from the Trump administration. Meanwhile, Gilman points to the Sutter Health case and a federal settlement with North Carolina-based Atrium Health in 2018 as signs that health systems should “be a bit more cautious” when drawing up contracts that could be seen as anti-competitive, such as those that include measures that ban insurers from “steering” patients toward less expensive medical care or revealing pricing information. “I think there is — as a result of those two enforcement actions — increased risk, at the least for the largest systems that have meaningful shares in their local markets,” Gilman said. Provider groups are readying their defenses. In August, the American Hospital Association sent a letter to antitrust officials calling for more reviews of health insurance companies, saying payers have “largely escaped close scrutiny for conduct and practices that adversely impact both consumers and providers.” The group declined an interview request. David Maas, an antitrust lawyer at Davis Wright Tremaine LLP who works with health care providers, noted that ramped-up scrutiny on hospitals could hurt smaller physician groups or rural hospitals that are the only option for care in some communities. “We already have aggressive enforcement in that space, and it often is good and leads to more competitive marketplaces,” Maas said. “But just in the interest of being more aggressive, to push for even more enforcement in health care, I think could lead to some unfortunate outcomes, because a lot of health care providers are struggling.” Hospital mergers have slowed this year, with 27 deals completed in the first half of 2021 compared with 43 in the same time period last year, according to a Kaufman Hall analysis. While the number of deals has fallen, revenue is on par with previous years as health systems focus more on regional partnerships in new markets rather than acquiring smaller independent hospitals, the analysis said. Other health industries in regulatory crosshairs Hospitals aren’t the only health care groups getting a closer look in the Biden era. The FTC has also signaled interest in vertical mergers, when companies that don’t compete directly consolidate, and is looking to unwind life science company Illumina Inc.’s $7.1 billion acquisition of Grail Inc., which was finalized last month despite a lack of clearance from the FTC or European regulators. In Sept. 2 letters to GOP lawmakers who questioned the agency’s stance, Khan said the FTC is at a “crossroads” and has taken an “unduly permissive” approach in the past that’s allowed for massive companies to form across industries. Antitrust lawyers are closely watching the Illumina-Grail case, which will be “the first vertical merger case the FTC litigates in decades,” Gilman said. Another key deal to watch: Michigan-based Beaumont Health and Spectrum Health said last week they’re proceeding with a merger that would give the combined health system control of 22 hospitals, an outpatient business and a health plan covering 1 million people. If approved, the merger is expected to be finalized this fall. Collaborations between payers and providers — forming so-called “payviders” — have become increasingly common, with hospital systems launching their own health plans and health insurance giants such as UnitedHealth Group Inc. moving into health care delivery in recent years. “In the coming years, the for-profit insurers will start following United’s lead in acquiring, or effectively acquiring, more and more providers,” Maas said. Some analysts are skeptical of the Biden administration’s ability to meaningfully rein in such deals. “The idea that now Biden is going to direct the FTC to pay closer attention to health care mergers is a lot like closing the barn door after the horses have run out,” said Michael Abrams, co-founder and managing partner at health care consultancy Numerof & Associates. But “when you combine the payer and the provider, it’s the consumer who, more than ever, needs protection.” RELATED: Pharmacy Benefit Managers Are Feeling a Push From States to ‘Turn the Lights on’ to Their Business Practices Regulators picking their battles Going forward, Gilman said he expects agencies to “be less likely to either clear or settle vertical merger transactions” right away, which “could have some chilling effect.” But regulators will also have to “triage” top priority cases, given the FTC said it is being hit with a “tidal wave” of merger filings.

#### Law enforcement will be focused on health care now.

Shryock 21, analyst @ Medical Economics (Todd, “Hospital consolidations in crosshairs of Biden administration,” *Medical Economics*, <https://www.medicaleconomics.com/view/hospital-consolidations-in-crosshairs-of-biden-administration>)

As part of a sweeping executive order, President Biden addressed hospital mergers and their sometimes negative effects on patients and the health care system. The order specifies that the Justice Department and Federal Trade Commission review and revise their merger guidelines to ensure patients are not harmed by the mergers. The administration points out that hospital consolidation has hit rural areas especially hard, leaving many patients without good options for convenient and affordable health care services. Since 2010, 139 rural hospitals have shuttered, including a high of 19 last year during the pandemic.

#### Top of the agenda

Mitchell 21 (Joseph, “FTC cracks down on health tech: 7 things to know,” <https://www.beckershospitalreview.com/healthcare-information-technology/ftc-cracks-down-on-health-tech-7-things-to-know.html>)

Healthcare's data privacy and monopoly concerns top the FTC's agenda as its chair, Lisa Khan, completes her first two months in the role, according to the report. Seven things to know A trial kicked off Aug. 24 examining monopoly concerns in cancer screening technology. At issue is the acquisition of startup biotech firm Grail by genetic sequencing giant Illumina. The case was in the works before Ms. Khan's confirmation, but it showcases that health IT is part of the FTC's agenda, Politico reported. The way healthcare and tech companies handle sensitive data “is an area that I'm sure [Ms. Khan’s] very, very interested in," said Jessica Rich, former director of the FTC’s consumer protection bureau. The FTC will also closely watch hospital mergers, Ms. Rich said. "I expect her and the commission to take a very bold approach to what constitutes harm for both," Ms. Rich said. "I expect her to pay close attention to algorithms and potential discrimination in healthcare, both denials and pricing issues which the FTC's laws can address."

### 1NR---AT: No Ev On Chopping Block

#### Healthcare will be the first arena on the chopping block---the executive has finite human capital and cash, cutting from big tech is a no-go, so smaller, low profile priorities will be cut---that’s McCabe.

### 1NR---AT: Fiat Funding

#### Yes, the aff gets to fiat funding for enforcement---that’s our link---it has to come from somewhere, only evidentiarily supported normal means is it comes from healthcare---above. Allowing the aff to fiat out of political tradeoffs for the plan is nonsensical and nukes politics and court capital DAs – key to neg strategy

### 1NR---Link---Labor

#### The aff is an enforcement nightmare for antitrust authorities. Measuring employment concerns requires an entirely new framework of analysis, and studies centered on short and long-term effects.

#### It completely shakes up everyday workings of the FTC and DOJ, because it nullifies the consumer welfare standard. Antitrust officials are not labor economists---they would have to take hours of legal education just to get to ground zero.

#### Link magnifiers---aff said they apply retroactively, which means every possible economic sector is subject to scrutiny.

#### This is substantively different from all of their thumpers, because those are a description of priorities, not fundamental shifts in the structure of antitrust law.

#### The aff requires enforcement by antitrust authorities.

Hafiz 20 (Labor's Antitrust Antitrust Paradox , <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2286&context=lsfp>)

Growing inequality, the decline in labor’s share of national income, and increasing evidence of labor-market concentration and employer buyer power are all subjects of national attention, eliciting wide-ranging proposals for legal reform. Many proposals hinge on labor-market fixes and empowering workers within and beyond existing work law or through tax-and-transfer schemes. But a recent surge of interest focuses on applying antitrust law in labor markets, or “labor antitrust.” These proposals call for more aggressive enforcement by the Department of Justice (DOJ) and Federal Trade Commission (FTC) as well as stronger legal remedies for employer collusion and unlawful monopsony that suppresses workers’ wages.

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

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

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

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

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

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

#### The plan extends antitrust beyond its institutional capacity

Sokol 20, University of Florida Research Foundation Professor of Law, University of Florida (Daniel, “Antitrust's "Curse of Bigness" Problem ,” <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=2020&context=facultypub>)

Antitrust works well because it is technocratic in that a singular (but flexible within its economics) goal is administrable institutionally. To introduce the world of political imperfections into a technical process that examines markets would create further distortions affecting consumers.152 Antitrust does well dealing with antitrust problems. To the extent that there are other related problems, the right answer is not to create an antitrust that lacks democratic accountability (because antitrust becomes regulation via the backdoor) and exceeds its mandate of the past forty years. Rather, the better solution is to identify the underlying problem and solve it with more effective tools. If the problem is one of redistribution, tax is a better choice than antitrust.153 If the problem is one of privacy, strengthen privacy laws. 154 If the problem is one of financial institutions or sector regulators not doing what they need to do, correct structural problems with sector regulators. Antitrust has increasingly moved out of sector regulation 155 and toward advocacy. 156 The advocacy budget of the antitrust agencies is tiny, and to the extent that the problem is the rules of the game for particular industry sectors, Wu falls short by not suggesting greater competition advocacy. Wu’s concern with big tech companies because they are big (p. 126) is as misplaced now as it was earlier in antitrust history. Antitrust has gone through various moments in which it had reevaluated whether it has the proper tools to combat anticompetitive behavior in technology-related markets.157 It does have such tools and can bring important cases in these markets.158 It was just a decade ago that we were told that Walmart was taking over shopping, that eBay was the largest online marketplace, or that Facebook was the primary way in which users shared information. Today, Uber competes with Lyft, Amazon has eclipsed eBay, Facebook is a legacy service, and younger people use any other set of applications to share information— such as Pinterest, Twitter, or Snapchat. In a world of continuous change, antitrust is what remains constant. It has the tools to police against unlawful exercise of monopoly power and adapts to changes in economic theory and empirics. To ask antitrust to go beyond its institutional capacity sets up antitrust to fail, because Wu’s deeper concern is with how society is structured. That structure can be changed through elections to the presidency and Congress and through changes as to the makeup of the Supreme Court. Antitrust history shows that it is the Supreme Court that changes antitrust law and policy the most because of antitrust’s common law–like nature. 159

### 1NR---AT: Link Turn

#### The aff doesn’t get to fiat attitudinally past the plan, means no additional funding beyond implementation. That destroys debate, especially on antitrust---politics and DOJ/FTC tradeoff are core topic DA’s, antitrust salience should be understood through political valence.

#### Means they do not get to fiat Congress appropriates funds, or fiat that the courts rule in favor of the FTC every time.

#### No uniqueness for the turn---no evidence the FTC will lose cases now, their evidence isn’t predictive, and no evidence says they will overstretch to the point it destroys institutional credibility.

#### Aff doesn’t solve the turn regardless:

#### 1---replacing worker welfare doesn’t suddenly mean FTC has the legal goods to beat big tech mergers---aff only protects unions and gig economy workers, like Uber.

#### 2---political backlash and partisanship undermine anti-trust enforcement via agency appointments, judge selection, and partisan pressures.

Kovacic 14, Global Competition Professor of Law and Policy @ George Washington (William, Politics and Partisanship in U.S. Antitrust Enforcement, *Antitrust Law Journal*, 2014, Vol. 79, No. 2 (2014), pp. 687-711)

What accounts for these and other notable variations in federal enforcement activity? One common explanation is "politics"9 - a shorthand expression for the capacity of elections and elected officials to bend the antitrust enforcement system to serve a set of policy preferences or constituent desires. By this view, the political process affects enforcement through presidential elections, the selection of agency leadership, the intervention of executive branch and congressional officials in routine agency decision making, and the appointment of federal judges who hear antitrust cases. It is unsurprising that a regulatory system rich in power and prosecutorial discretion would have some connection to the political process. The substantial economic significance of the statutes whose enforcement is entrusted to the DOJ and the FTC ensures that elected officials will study what these agencies do and sometimes seek to influence the exercise of their prosecutorial authority. It is also difficult to imagine that a nation would give significant responsibility to law enforcement bodies without some means for elected officials to hold agency officials to account for their policy choices. Expansive grants of authority tend to come with accountability strings attached. For academics, practitioners, and public officials, the question is not whether political forces surround the DOJ and the FTC, or whether decisions by elected officials sometimes influence agency behavior. They assuredly do.11 The relevant queries are how, and how much? This Article addresses these questions by examining one dimension of the relationship between the federal antitrust agencies and the political process. It discusses how electoral politics can increase the influence of partisanship in the operation of the DOJ and the FTC. As used in this Article, partisanship is a determined commitment to party goals and causes. It manifests itself in a tendency to exaggerate the virtues of the party and to disregard or devalue the accomplishments of political rivals. Through the political appointment of the DOJ and FTC leadership, partisanship can spill over into the formulation and presentation of agency policy. As will be shown, partisanship can have destructive effects. Among other consequences, partisan attitudes can lead officials to act in ways that serve party goals at the expense of the agency's programs and reputation. The partisan tends to overlook how continuity of policy and incremental improvements have strengthened the DOJ and FTC antitrust programs regardless of which party controls the White House.12 Partisanship impedes the development of a norm that recognizes the importance of cumulative improvements, respects past contributions to agency effectiveness regardless of party origin, and encourages long-term investments that enhance the agency's capability and reputation.13 The striving for electoral success can beget partisanship, and, by eroding support for a norm that encourages cumulative investments for improvement over the long term, partisan attitudes can diminish agency effectiveness. In this sense, politics can influence federal antitrust enforcement, and influence it negatively.

### 1NR---AT: Overstretch inevitable

#### Healthcare funding sufficient now.

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

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

#### Solves.

LaPointe 21 (Jacqueline, “How Policy, Regulation Will Challenge Consolidation in Healthcare,” Recycle Intelligence, https://revcycleintelligence.com/news/how-policy-regulation-will-challenge-consolidation-in-healthcare)

However, the executive order has some serious implications for healthcare organizations—and not just hospitals and health systems—looking to join forces with others in their market. RevCycleIntelligence spoke with industry experts to learn what healthcare leaders need to know about the executive order and how it will impact consolidation in healthcare moving forward. WHAT WILL BE DIFFERENT? Antitrust enforcement should continue to be top of mind for hospital and health system leaders engaging in merger and acquisitions deals. But now more than ever, leaders should know that just because a deal passes the first hurdle does not mean it is out of the woods yet. “Hospital leaders should be mindful that the agencies can challenge consummated transactions at any time,” says Ken Vorrasi, antitrust litigation partner at Faegre Drinker. “They shouldn't take solace in the fact that they've received front-end Hart-Scott-Rodino clearance. In reviewing past transactions, the agencies—the FTC or state attorney general—could issue subpoenas and ask about price changes, what costs have been cut, what efficiencies have been realized, what quality benefits there are, and try to do an assessment as to whether or not the transaction was pro-competitive for insurers and patients or not.” The executive order highlights the FTC’s ability to challenge healthcare merger and acquisition deals that were not previously challenged by an administration. Prior to this order, the FTC has also recently revamped its Merger Retrospective Program to expand and formalize retrospective analyses of consummated mergers, including those in healthcare. But most notably, the FTC has unraveled a healthcare deal successfully in the past. In 2004, the FTC challenges Evanston Northwestern Healthcare Corporation's acquisition of Highland Park Hospital and eventually ordered a restoration of the competition lost as a result of the acquisition. This type of challenge is rare but could become more common. "It is fair to say that an action like that one is more realistic and likely today than it was before the executive order and the new antitrust leadership," Vorrasi stated. READ MORE: Rapid Pace of Health System Consolidation to Continue, Experts Say “Healthcare leaders also need to be mindful of the impact and assessing the risk with their transactions that are vertical in nature, whether upstream or downstream, because those transactions have the attention of the agencies as well.” While much attention has been paid to antitrust review of health system and hospital mergers, healthcare leaders should also not forget about vertical integration. “We’re going to see more scrutiny in these areas, particularly with the new vertical merger guidelines the FTC and DOJ issued in 2020. That is certainly top of mind to the FTC and the FTC has substantial experience with hospital-physician consolidation and continues to actively study its effects on competition and quality,” Vorrasi said.

#### High enforcement prioritization chills consolidation

LaPointe 21 (Jacqueline, “How Policy, Regulation Will Challenge Consolidation in Healthcare,” Recycle Intelligence, https://revcycleintelligence.com/news/how-policy-regulation-will-challenge-consolidation-in-healthcare)

Healthcare mergers and acquisitions have promised to bring lower costs, higher quality, and better access to care. But a new executive order is challenging the rapid pace of consolidation in healthcare, directing policy and regulation to put a chill on deals the administration feels are harmful to patients.

### 1NR---AT: Congress Solves Retroactively

#### Congress doesn’t solve---no ev for this, dropped IL that rural healthcare key---FTC is the only way to break up mergers.

### 1NR—AT Private suits

#### FTC and DOJ get drawn in

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

But that separation of criminal and civil enforcement sections at the Antitrust Division does not create walls or silos

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

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

From document review to charges for price-fixing

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

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

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

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

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

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

#### **Enforcement against multiple companies magnifies the link.**

Sutner 20, News Director @ TechTarget. (Shaun, 12-15-2020, "Efforts to break up big tech expected to continue under Biden", *SearchCIO*, <https://searchcio.techtarget.com/news/252493702/Efforts-to-break-up-big-tech-expected-to-continue-under-Biden>)

Biden pushed on antitrust

Antitrust activists, though, are optimistic about the prospects of a Biden administration clamping down on big tech -- an outcome they argue is long overdue, with decades of light enforcement of antitrust laws. They are pushing Biden toward aggressive antitrust policy. Thirty-three antitrust, consumer and progressive groups in a letter on Nov. 30 urged Biden to reject the influence of big tech vendors and to exclude big tech executives, lobbyists, lawyers and consultants from his administration. Prominent among the signatories was Public Citizen, the liberal consumer advocacy group that has called for Biden to triple the FTC's annual funding, from $400 million to $1.2 billion. "At the front end we want these investigations to be pressed. There are supposed to be investigations of Amazon and Apple and we believe there are cases to be brought there," said Alex Harman, competition policy advocate at Public Citizen and former chief legal counsel to Sen. Mazie Hirono (D-Hawaii). "It's a lot to bring big antitrust cases against multiple companies, and that requires resources," Harman said. "As a lawyer, I don't want to say 'Biden does this,' but we want results that structurally change these companies. We don't want quick resolutions and quick settlements."

### 1NR---AT: !D---Food Wars

#### Yes impact to food insecurity. Regional instability can be causally attributed to reliable food supplies---solves instability, mass migration, diplomatic and economic relationships that would otherwise cause escalation spirals---that’s Castellaw.

#### Food wars go nuclear—expert and studies are all neg

FDI 12Future Directions International. “International Conflict Triggers and Potential Conflict Points Resulting from Food and Water Insecurity.” May 25th, 2012. http://futuredirections.org.au/wp-content/uploads/2012/05/Workshop\_Report\_-\_Intl\_Conflict\_Triggers\_-\_May\_25.pdf

There is little dispute that conflict can lead to food and water crises. This paper will consider parts of the world, however, where food and water insecurity can be the cause of conflict and, at worst, result in war. While dealing predominately with food and water issues, the paper also recognises the nexus that exists between food and water and energy security. There is a growing appreciation that the conflicts in the next century will most likely be fought over a lack of resources. Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, Germany’s World War Two efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI’s recent workshops, was that the scale of the problem in the future could be significantly greater as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world. Page 9 of 22 In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI’s March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note. . He writes (p.36), “…if people are hungry, especially in cities, the state is not stable – riots, violence, breakdown of law and order and migration result.” “Hunger feeds anarchy.” This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if “large regions of the world run short of food, land or water in the decades that lie ahead, then wholesale, bloody wars are liable to follow.” He continues: “An increasingly credible scenario for World War 3 is not so much a confrontation of super powers and their allies, as a festering, self-perpetuating chain of resource conflicts.” He also says: “The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources.” As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves. Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry. A study by the International Peace Research Institute indicates that where food security is an issue, it is more likely to result in some form of conflict

. Darfur, Rwanda, Eritrea and the Balkans experienced such wars. Governments, especially in developed countries, are increasingly aware of this phenomenon. The UK Ministry of Defence, the CIA, the US Center for Strategic and International Studies and the Oslo Peace Research Institute, all identify famine as a potential trigger for conflicts and possibly even nuclear war.

#### US shocks cause extinction –causes global conflict and destabilizes international order

DoCampo 17 [Isabel DoCampo joined the Council's Global Food and Agriculture Program in 2015 and currently serves as a research associate. Previously, she has conducted research for Vivo en Positivo, a Bolivian HIV organization, and served as a fellow for the Project on International Peace and Security, through which she presented a policy brief regarding epidemic security at the National Press Club in Washington, DC. DoCampo holds a BA in international relations with a minor in public health from the College of William and Mary 2-8-2017 https://www.thechicagocouncil.org/blog/global-food-thought/food-secure-future-warding-instability-and-conflict]

Food Insecurity and Price Shocks can Spark Violence and Political Instability

We have learned time and again that food supply shocks—like food price spikes—lead to instability, violence, and even regime collapse. In 2007 and 2008, when global food prices spiked dramatically, the governments of Haiti and Madagascar fell in the wake of food price-related protests. In 2010 and 2011, food prices were again implicated in the destabilizing uprisings of the Arab Spring. More recently, severe food shortages and soaring inflation have sparked rioting and lootings throughout Venezuela, as 90 percent of Venezuelan families struggle to afford food.

Council research has found that food price-related unrest occurs most often in urban areas, particularly in low- and middle-income countries. Africa and Asia, where rates of undernourishment are high and rates of urbanization are higher, housed 28 of the 29 riots that occurred during the food price spikes in 2007-2008 and 2010-2011. In developing cities on these continents, impoverished urban dwellers may spend up to 50 percent of their incomes on food. Additionally, food supplies in these cities many be tenuous—either dependent on food imports or domestic production vulnerable to external shocks. As such, urban consumers in low- and middle-income countries may face chronic food insecurity, significant food price volatility, and little ability to absorb price shocks—these factors all contribute to the likelihood of rioting and unrest in urban areas plagued by hunger crises.

Rural citizens—though they aren’t able to mobilize as readily as their urban counterparts—are deeply impacted by instability in agricultural markets and chronic food insecurity. Rural communities depend on stable food prices, sufficient agricultural inputs, and fair agrarian policy to sustain their livelihoods. In their absence, rural residents may be more likely to engage in civil unrest. The Revolutionary Armed Forces of Colombia (FARC)—which concluded peace negotiations with the government in December after a bloody, 52-year conflict—was formed by disenfranchised rural communities, who had suffered from a collapse in agricultural markets and a lack of agrarian reform. FARC continued to recruit poor, rural people throughout its insurgency.

Food Insecurity is a Powerful Driver for Migration

Food insecurity is not only a potential driver of conflict, but it can also spur large-scale migration. The World Food Programme and the International Organization for Migration first identified this relationship in the migratory patterns of subsistence farmers and households impacted by drought in El Salvador, Guatemala, and Honduras in 2014. They found that food insecurity proved a significant factor in decisions to migrate, particularly to the United States, while violence may have also played a less consistent role in outward migration from the region.

This is a phenomenon we, sadly, see playing out today across the Middle East and sub-Saharan Africa. In South Sudan, where nearly one third of the population is in need of emergency food assistance as a result of civil war, 450,000 people have left the country since July 2016. Conflict in Syria, meanwhile, has decimated agricultural production, destroying agricultural infrastructure and disrupting food supply chains. With little ability to generate livelihood or secure sufficient food, many farmers and rural households have had no choice but to migrate. Those that have fled to refugee camps in the region continue to face hunger as funding cuts have restricted the ability of organizations like WFP and UNHCR to supply sufficient rations and aid; many refugees have chosen to migrate farther, to Europe in many cases, in response.

Food Security Promotes International Security

The impacts of food insecurity, especially when they provoke instability and unrest, reach well beyond national borders. When food insecurity topples governments, the international order is invariably altered and regions are destabilized. When food insecurity forces migration across regions, or continents, international relations are strained, public services are weakened, and families are torn apart.

These are lessons, however, that are too often employed in hindsight. In Cameroon, the United Nations Development Programme has begun to provide agricultural inputs and training to youth, who, without economic alternative, were being recruited to Boko Haram. The Colombian government incorporated agricultural development and rural poverty reduction measures into its peace treaty with FARC, having completed its first rural census in 45 years in 2015.

We all have enormous stake in ensuring the food security of individuals and communities around the world—in providing both consumers and producers with the resilience to withstand shocks from climate, conflict, or any extreme conditions. We have the opportunity, now, to do so before further instability threatens our collective welfare. Otherwise, we will continue to face new iterations of the challenges we see today: deeply entrenched conflict, widespread migration, and unimaginable human suffering.