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#### The 50 States should increase their minimum wages to $25.00.

#### Solves income inequality.

Carl Gibson 21. Journalist, works at CNN. 1/28/2021. “Why U.S. Workers Need a $25 per Hour Minimum Wage.” https://www.barrons.com/articles/why-u-s-workers-need-a-25-per-hour-minimum-wage-51611858500

The gap between hourly workers and corporate executives has also risen dramatically since the [decline of unionization](https://www.nytimes.com/2018/07/06/business/labor-unions-income-inequality.html), particularly since the [late 1970s](https://www.epi.org/publication/ceo-compensation-2018/). The CEO of McDonald’s made the equivalent of $8,365 an hour in 2019, [according to Salary.com](https://www1.salary.com/Stephen-Easterbrook-Salary-Bonus-Stock-Options-for-MCDONALDS-CORP.html). Meanwhile, the average McDonald’s worker in the U.S. was paid between [$11 and $14 an hour](https://www.salary.com/research/salary/employer/mcdonalds-corp/fast-food-worker-hourly-wages). This is not the case in other developed economies. McDonald’s workers in Denmark, for example, are paid [$22 an hour](https://www.nytimes.com/2020/05/08/opinion/sunday/us-denmark-economy.html), and also get six weeks of paid vacation each year along with life insurance, one year of paid maternity leave, and a pension (and a Big Mac [is 13% cheaper](https://www.economist.com/big-mac-index) in Denmark than it is here.)

Wages must be increased to meet the continued [rise](https://fred.stlouisfed.org/series/CPIAUCSL) in U.S. cost of living. Despite the dire predictions made by industry-funded trade groups like the Employment Policies Institute that claim higher wages would reduce “[overall payroll, hours, and job opportunities](https://www.detroitnews.com/story/opinion/2020/10/22/opinion-15-minimum-wage-would-ruin-economic-recovery/6006475002/),” an economic boom is far more likely. And it makes logical sense—by putting more money into workers’ pockets, those workers will have more money to spend, which strengthens a consumer-based economy.

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#### 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 M and A priorities

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

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

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

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

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

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

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

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

#### US ag 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.

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#### Two-track infrastructure will pass, PC is key, but there’s zero margin for error

Greve 9-7-2021, politics breaking news reporter for Guardian US, based in Washington (Joan, “Joe Biden to referee Democrats in brewing battle over $3.5tn budget bill,” *The Guardian*, <https://www.theguardian.com/us-news/2021/sep/07/biden-democrats-brewing-battle-budget-bill>)

Congress will return from its summer recess later this month, and some Democrats are already gearing up for a political fight – with each other. Democratic lawmakers are looking to pass their $3.5tn spending package, after the House and the Senate approved the blueprint for the budget bill last month. The ambitious legislation encompasses much of Joe Biden’s economic agenda, including proposals to expand access to affordable childcare, invest in climate-related initiatives and broaden Medicare coverage. But to get the bill passed, Democrats will first need to reach an agreement on the cost of the legislation. Centrist Democrats, including Senators Kyrsten Sinema and Joe Manchin, have expressed concern about the bill’s $3.5tn price tag, while progressives have indicated they will fiercely oppose any attempt to cut funding in the proposal. With his entire economic agenda hanging in the balance, Biden will need to convince the two fractious wings of his party to come together and pass a comprehensive spending package. And given Democrats’ extremely narrow majorities in both the House and the Senate, there is virtually no room for error. Despite warning signs of intra-party friction over the cost of the budget bill, congresswoman Suzan DelBene, who chairs the centrist New Democrat Coalition, said the House’s focus right now should still be on the content of the legislation. “I think discussion of a number is more distracting when the focus really needs to be on, what is the substance going to be of this legislation?” DelBene told the Guardian. “If we have strong legislation the people support, I think we can find the path forward.” Over in the Senate, majority leader Chuck Schumer is attempting to advance the bill using reconciliation, meaning Democrats do not need any Republican support to pass the legislation. But the 50-50 split in the upper chamber means that every single Democratic senator must be on board to get the bill approved. Schumer has been clear-eyed about the challenges ahead for the legislation. Shortly after the Senate approved the blueprint for the bill in a party-line vote last month, Schumer told reporters, “We’ve labored for months and months to reach this point, and we have no illusions – maybe the hardest work is yet to come.” Manchin proved Schumer’s point last Thursday, when he wrote a Wall Street Journal op-ed calling for a “strategic pause” in advancing the spending package. “While some have suggested this reconciliation legislation must be passed now, I believe that making budgetary decisions under artificial political deadlines never leads to good policy or sound decisions,” Manchin said in the op-ed. “I, for one, won’t support a $3.5tn bill, or anywhere near that level of additional spending, without greater clarity about why Congress chooses to ignore the serious effects inflation and debt have on existing government programs.” Bernie Sanders, the leftwing chairman of the Senate budget committee, responded to Manchin’s warning in kind, threatening to torpedo the bipartisan infrastructure bill if the spending package is not approved. “Rebuilding our crumbling physical infrastructure – roads, bridges, water systems – is important,” Sanders said on Twitter. “Rebuilding our crumbling human infrastructure – healthcare, education, climate change – is more important. No infrastructure bill without the $3.5tn reconciliation bill.” Progressive groups have echoed Sanders’s argument, insisting that every component of the $3.5tn legislation is vital. Sanders had initially called for spending $6tn on the budget bill, so progressives already view the current price tag as a concession. “We’re in a moment of crisis. Is this really the time for the Senate to press pause?” Ellen Sciales, the communications director of the climate group Sunrise Movement, said in a statement. She added: “If the Senate can’t pass an incredibly popular climate and jobs plan during a summer of unprecedented, fatal climate disasters, and an economy reeling from a global pandemic, we must abolish the Senate. $3.5tn was the compromise.” Natalia Salgado, the director of federal affairs for the Working Families Party, noted that some progressive economists have suggested the US needs to spend $10tn over 10 years to meet its obligations in the Paris Climate Agreement. “We’re going to come nowhere near that,” Salgado said. “So we can’t afford to lose a single cent in this $3.5tn. Every single penny will count.” Despite the war of words between moderates and progressives, the White House has continued to express confidence that Congress will ultimately reach an agreement on the legislation. “The president and his whole team are proud of and fighting for the substance of his Build Back Better agenda,” a White House official said in a statement. “These are complex processes, but as recent weeks have demonstrated, leaders in Congress and the President know how to move them forward.”

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

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

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

#### Passage solves climate change.

Roberts 8-7-2021, energy reporter, formerly of Vox (David, “Crunch time: this is America's last chance at serious climate policy for a decade,” *Vox*, <https://www.canarymedia.com/articles/climate-policy-crunch-time-we-need-congress-to-pass-a-clean-energy-standard-and-tax-credits/>)

Congress is working on what is likely to be its last big shot at climate change policy for a decade or more. If things go well, the legislation will include a clean energy standard (CES) and clean energy tax credits, which together would revolutionize the US electricity system. If things don’t go well, there will be no substantial climate legislation for many years to come. That’s the only question being decided: Will we get a CES and tax credits, or will we get nothing that will tackle fossil fuels this decade? That’s the binary. It’s time to focus. Looking around, it doesn’t seem like clean energy supporters, climate hawks, or the left more broadly really get that. So let’s talk about why this is such an important moment and what’s at stake. The reconciliation bill is likely the last chance for big federal climate legislation The Democratic approach for a while now has been to proceed along dual tracks. On one track, there’s the bipartisan infrastructure bill, hammered out by a group of just over 20 senators from both parties. On the other track, there’s the budget reconciliation bill, which is meant to contain … everything else in Biden’s agenda. The former needs 60 votes; the latter can pass with 50 Democratic votes. This has always been a fraught and delicate strategy. It could crash and burn in any number of ways. But so far, at least, it is hanging together. The bipartisan group unveiled its bill this week; it is slowly inching toward a vote, though Senate Minority Leader Mitch McConnell (R-Ky.) is doing everything he can to slow it down and gum it up. Twitter avatar for @jsfreed Josh Freed @jsfreed Okay, everyone, we’ve been crunching the BID numbers to see what’s in this deal and how it’ll impact clean energy and climate. Warning, this is a long 🧵 … 1/ seinfeld newman GIF July 29th 2021 176 Retweets497 Likes It contains decent chunks of money for things that will indirectly help clean energy — transmission, demonstration projects, R&D — but it lacks anything that will directly confront fossil fuels in the coming decade, the sine qua non of adequate climate policy. As Robinson Meyer argues in The Atlantic, it is not a climate bill, not really. There’s no guarantee the bipartisan bill will pass, and there’s no way to know how the Senate’s bipartisanship fetishists, Sens. Joe Manchin (D-W.V.) and Kyrsten Sinema (D-Ariz.), will react if it doesn’t. But whether it passes or not, when it comes to decent climate policy, it’s all about the reconciliation bill. There won’t be another bill this big while Democrats control Congress, and they won’t control Congress for long. What Democrats are able to get through in the reconciliation bill is likely to be the last big federal climate legislation for a decade at least. This is the key thing to understand, so I’m going to repeat it: What Democrats are able to get through in the reconciliation bill is likely to be the last big federal climate legislation for a decade at least. (You may be thinking: can’t Democrats do another reconciliation bill next year? Yes, they can, but the midterms will be in full swing, moderates will be feeling even more cowardly than usual, political appetite for big spending will have dried up in the face of a recovering economy, and focus will have turned, hopefully, to voting reform. This one is it.) Absent substantial federal voting reform — which is looking less and less likely, certainly nothing anyone should bet on — all signs point toward Republicans taking back the House in 2022. It’s unclear what will happen in the Senate, but regardless, if the GOP controls either house, no climate legislation will pass (and no voting reform). Republican presidential candidates can win despite larger and larger losses in the popular vote. And the chances of Democrats controlling both houses of Congress again are only getting dimmer. The structural advantages that favor the GOP in the US system are only tilting further in its favor, while the party is actively extending those advantages with a wave of voter-suppression laws at the state level and an accompanying wave of gerrymandering, which alone could win the GOP the House in 2022, even absent any Dem seats being lost. The GOP is protected in this endeavor by a hyper-conservative Supreme Court (which, by the way, could get even more conservative if the disastrously vain Stephen Breyer hangs on until there’s a Republican president again). The conservative movement in the US is attempting to engineer one-party control of US government (along the lines of their new hero, Hungarian autocrat Viktor Orban). There’s no way to know how successful the endeavor will ultimately be, but it’s a pretty good bet, given current trends, that Democrats won’t control the presidency and both houses of Congress at the same time again for a long while. Last time they lost full control (just before a wave of gerrymandering in 2010), it was a decade until they got it back. Twitter avatar for @sarahposner Sarah Posner @sarahposner New, from me, @TPM: That all begins in January 2023 — which makes this year’s reconciliation bill the Democrats’ last big shot at climate and clean energy policy. There are two key clean-energy policies on the table Climate folk are prone to endless policy arguments; everyone has their favorites. But most of those arguments are immaterial right now. Democrats have lined up behind a menu of clean energy policies in line with Biden’s climate plan. What’s on that menu is what might get in the bill. Might. If it’s not on that menu, it’s not going to get in. There’s no carbon tax. There’s no cap-and-dividend. There’s no prohibition on new fossil fuel infrastructure. You may support any and all of those policies, but they are not live options in the reconciliation bill. Right now, political pressure is best aligned behind options that actually are on the menu. Two in particular are immensely important — together, they would be transformative. The first is a Clean Energy Standard that would reduce electricity sector greenhouse gas emissions 80 percent by 2030. (Biden’s plan calls for 100 percent by 2035, but a reconciliation bill can only extend 10 years out.) It’s not actually going to be a standard, per se, because you can’t pass regulatory standards through reconciliation. Instead, it’s going to be a system of fines and payments that will incentivize utilities to increase their proportion of renewable energy to meet the targets. It’s called a clean electricity payment program (CEPP). A CEPP actually has some advantages over the traditional CES’s and renewable portfolio standard (RPSs) commonly seen in states. For one thing, it’s more progressive: the money to drive the transition comes from federal coffers (via taxes on corporations and the wealthy) rather than from electricity rates, which are regressive. If you’re interested in the details of how a reconciliation-friendly CEPP will be structured, see this piece from Ben Storrow and Scott Waldman of E&E, or this thread from Princeton professor Jesse Jenkins: Twitter avatar for @JesseJenkins JesseJenkins @JesseJenkins Broad contours of a Reconciliation-friendly Clean Electricity Standard (CES) are now coming into public view, as House & Senate Dems prepare a $3.5T Budget Resolution that will kick off a Reconciliation process, which permits passage of budget-related measures w/50+ Senate votes. July 15th 2021 1 Retweet16 Likes The end result will be the same as a conventional CES: the US electricity grid will reach 80 percent decarbonization by 2030, which is an achievable but still incredibly ambitious target. As I’ve said so many times, nothing is more important to deep decarbonization than cleaning up the electricity grid. It’s the core of the “electrify everything” strategy. The second is boosted and expanded clean energy tax credits. The investment tax credit (ITC) and production tax credit (PTC), for wind and solar respectively, would be renewed, but various forms of tax credits would also be extended to energy storage, hydrogen, carbon capture, and other key clean energy technologies. (The details are in flux; for a blueprint, see the Senate Finance Committee’s Clean Energy for America Act or the House Ways and Means’ GREEN Act.) Tax credits will provide the supply push; the CEPP will provide the demand pull. The result will be an enormous surge of clean energy projects and jobs. This is the core of good climate policy: pushing fossil fuels off the grid over the next decade and replacing them with zero-carbon energy. There are other good climate provisions on the Democrats’ menu for reconciliation as well. I would love to see a Civilian Climate Corps. I’d love to see more money for public transportation and an electrified postal service fleet. Lots of smaller climate provisions might make it through just by virtue of not drawing much notice, which would be great. But the CEPP and the tax credits are the one-two punch needed to make a real short-term difference in the energy system. And they are on the menu. Manchin is likely to be skeptical of the CEPP. Although carbon capture counts as clean energy under the program, every analyst understands that the practical effect is going to be to ramp up renewables and ramp down fossil fuels on the grid. Manchin doesn’t actually want that. I have no idea if public pressure will have any effect at all on Manchin, but it couldn’t hurt. Might as well try it. The perilous path ahead for reconciliation Everyone on the left is aware that the reconciliation bill is the last big legislative train leaving the station, and every interest group wants a seat on it. Climate policy will be competing with other Democratic priorities. Especially as Sinema and Manchin arbitrarily reduce the total size of the bill, as they surely will, the factions of the party will be fighting it out over a shrinking pie. It is far from a sure thing that the CEPP and tax credits will survive negotiations. It’s all being decided right now. Everyone who cares about US climate progress should put aside their personal projects and preferences for a few weeks and speak in a unified voice. Call your representatives. Push the groups you’re involved to make noise about it. It’s going to be the CEPP and tax credits or nothing big for climate. If both those policies are put in place, it could set the US power system on a new course and strengthen American credibility at the upcoming COP26 international climate meeting. If they slip through the cracks, climate will have to settle for scraps and the US will surrender all hope of meeting its climate targets or influencing others to do the same. For the next few months, this is all that matters. If you’ve ever considered getting involved, now is the time.

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

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

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

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

#### State antitrust is 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.

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#### The United States federal government should establish regulations that prohibit private sector business practices\* that violate worker welfare.

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

-wage reductions and discrimination

-poor benefits allotments

-poor worker conditions

-attempts at union-busting.

#### The counterplan solves and competes

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

#### It avoids resource tradeoffs

Lohr 20, NYT columnist, has covered technology, business and economics for The Times for more than 20 years. In 2013, he was part of the team awarded the Pulitzer Prize for Explanatory Reporting. He is the author of “Data-ism” and “Go To.” (Steve, “Forget Antitrust Laws. To Limit Tech, Some Say a New Regulator Is Needed.,” *New York Times*, <https://www.nytimes.com/2020/10/22/technology/antitrust-laws-tech-new-regulator.html>)

For decades, America’s antitrust laws — originally designed to curb the power of 19th-century corporate giants in railroads, oil and steel — have been hailed as “the Magna Carta of free enterprise” and have proved remarkably durable and adaptable. But even as the Justice Department filed an antitrust suit against Google on Tuesday for unlawfully maintaining a monopoly in search and search advertising, a growing number of legal experts and economists have started questioning whether traditional antitrust is up to the task of addressing the competitive concerns raised by today’s digital behemoths. Further help, they said, is needed. Antitrust cases typically proceed at the stately pace of the courts, with trials and appeals that can drag on for years. Those delays, the legal experts and economists said, would give Google, Facebook, Amazon and Apple a free hand to become even more entrenched in the markets they dominate. A more rapid-response approach is required, they said. One solution: a specialist regulator that would focus on the major tech companies. It would establish and enforce a set of basic rules of conduct, which would include not allowing the companies to favor their own services, exclude competitors or acquire emerging rivals and require them to permit competitors access to their platforms and data on reasonable terms. The British government has already said it would create a digital markets unit, with calls for a Big Tech regulator to also be introduced in the European Union and in Australia. In the United States, recommendations for a digital markets regulator have also been made in expert reports and in congressional testimony. It could be a separate agency or perhaps a digital division inside the Federal Trade Commission. Significantly, the leading proponents of this path in the United States are mainstream antitrust experts and economists rather than break-’em-up firebrands. Jason Furman, a professor at Harvard University and chair of the Council of Economic Advisers in the Obama administration, led an advisory group to the British government that recommended the creation of a digital markets unit in 2019. “I’m a small ‘c’ conservative, and I’m not a fan of regulation generally,” said Jason Furman, a Harvard University professor. “But it’s needed in this space.”Credit...Zach Gibson/Getty Images Breaking up the big tech companies, Mr. Furman said, is a bad idea because that would risk losing some of the consumer benefits these digital utilities undeniably deliver. A regulator is necessary to police digital markets and the behavior of the tech giants, he said. “I’m a small ‘c’ conservative, and I’m not a fan of regulation generally,” Mr. Furman said. “But it’s needed in this space.” Regulators that focus on specific sectors of the economy are common in the United States. For financial markets, there is the Securities and Exchange Commission; for airlines, the Federal Aviation Administration; for pharmaceuticals, the Food and Drug Administration; for telecommunications, the Federal Communications Commission; and so on. There is also precedent for picking out a handful of big companies for special treatment. In banking, the biggest banks with the most customers and loans are classified as “systemically important financial institutions” and subject to more stringent scrutiny. Several supporters of a new tech regulator were officials in the Obama administration, which was known for being friendly to Silicon Valley. But the advocates said that experience — as well as the conservative, pro-big business drift of court rulings in recent years — left them frustrated with antitrust law as the only way to restrain the growing market power and conduct of the big tech companies. “The mechanism of antitrust is not working to protect competition,” said Fiona Scott Morton, an official in the Justice Department’s antitrust division in the Obama administration, who is an economist at the Yale University School of Management. “So let’s do something else — use a different tool.” Ms. Scott Morton led an expert panel on antitrust in a report last year on digital platforms by the Stigler Center at the University of Chicago’s Booth School of Business. The report recommended the creation of a regulatory authority. (Ms. Scott Morton has been a forceful critic of Google, but also a consultant to Apple and Amazon.) Such a regulatory approach carries the risk of government’s meddling in a fast-moving industry that could hobble innovation, some antitrust experts warned. While antitrust law reacts to alleged anticompetitive behavior and can thus be slow, that shortcoming is preferable to prescriptive government rules and regulations, they said. “I’m very uncomfortable with the regulatory path, especially if it means things like getting government approval for product changes,” said Herbert Hovenkamp, a professor at the University of Pennsylvania Law School. “The history of regulation shows that it is an innovation killer.” Editors’ Picks ‘Want to Join My Crossword Group Chat?’ She’s the Investor Guru for Online Creators The Shy Sisters Behind Austin’s Breakout Breakfast Tacos Continue reading the main story A. Douglas Melamed, a former general counsel of Intel and a former antitrust official in the Justice Department, shared that concern. But Mr. Melamed, a member of the expert panel for the Stigler Center report, said the tech giants did pose a competition problem. “I think regulation might make sense if it is narrowly focused, not running the industry,” said Mr. Melamed, who is a professor at Stanford Law School. The last major antitrust action against a big technology company was the landmark Microsoft case in the 1990s. The case began with a suit filed in 1994 by the Federal Trade Commission and a simultaneous consent decree. The Justice Department and several states later picked up the pursuit, investigated anew, filed suit and conducted an exhaustive trial. Microsoft was found to have repeatedly violated the nation’s antitrust laws, and the company then reached a settlement with the government, which a federal court approved in 2002. In the Microsoft case, the antitrust legal process worked, in its way. Yet its impact is still debated. Without the suit and years of scrutiny, some observers said, Microsoft could have throttled the rise of Google. Image The Justice Department and 20 states filed antitrust lawsuits against Microsoft in 1998. The Justice Department and 20 states filed antitrust lawsuits against Microsoft in 1998.Credit...Stephen Crowley/The New York Times But others said the technological shift toward the internet and away from the personal computer meant that Microsoft had lost the gatekeeper power it once held. Technology, not antitrust, they insisted, opened the door to competition. Triumph or not, the Microsoft case was two decades ago. Proponents of a new regulator said antitrust law was ill suited by itself to restraining today’s faster-moving digital giants. In the internet economy, they said, the forces that reinforce and expand the power of a market leader — called network effects — are stronger and more rapid than in the personal computer era. “Antitrust is not a fully adequate tool to deal with the companies that dominate these markets,” said Gene Kimmelman, who was on the Stigler Center panel and a co-author of a recent report by the Shorenstein Center at Harvard that called for the creation of a “digital platform agency” in America. Another argument for the regulatory option is that competition concerns now span four companies, not just one. Apple, Amazon, Facebook and Google are in different markets, including search, online advertising, e-commerce and social networks. Bringing separate antitrust cases against them would most likely be beyond the resources of the government. “When the competition issues are larger than a single firm, regulation might be the better tool to use,” said Andrew I. Gavil, a law professor at Howard University.

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#### The United States federal government should [prohibit private sector business practices that violate a worker welfare standard.] on the grounds that doing so is required to promote the general welfare and secure the blessings of liberty to our posterity.

#### Solves the case---AND CP alone sets a legal precedent requiring the protection of future generations

L. Orgad 10. Radzyner School of Law, The Interdisciplinary Center Herzliya. 10/01/2010. “The Preamble in Constitutional Interpretation.” International Journal of Constitutional Law, vol. 8, no. 4, pp. 714–738.

The preamble refers to the people as the source of authority23 and outlines six lofty goals: “To form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare; and secure the Blessings of Liberty.” Despite its central role in education and in the public debate, courts have rarely been inclined to rely upon the preamble only rarely. Empirical studies show that from 1825 to 1990, the sections of the preamble that refer to justice, general welfare, and liberty were independently mentioned by Supreme Court justices only twentyfour times, mostly in dissenting opinions (83.3 percent of all references), while only four justices (Black, Douglas, Burton, and Field) were collectively responsible for half of those references.24 Courts have rejected, repeatedly, the argument that constitutional rights or limitations can be inferred directly from the preamble. The classic case establishing its nonbinding nature was decided in 1905. In this case, a convicted defendant challenged the constitutionality of a statute adopted by the state of Massachusetts that, in his view, contradicted rights protected by the preamble. Rejecting this argument, Justice Harlan noted: Although that Preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the Government of the United States, or on any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution, and as such as may be implied from those so granted.25 Justice Harlan stripped the preamble of any legal force without providing any historical evidence or textual explanations. While he noted that individuals have no constitutional rights derived directly from the preamble, he neither stated, expressly, that the preamble has less significance than other constitutional provisions nor did he assert that it does not form a binding part of the Constitution. Yet, evidence suggests that the framers anticipated the role the preamble would play in constitutional interpretation.26 Alexander Hamilton even stated that the Bill of Rights was not necessary since the preamble was able to function as one.27 Joseph Story argued that the preamble “is a key to open[ing] the mind of the makers, as to the mischiefs, which are to be remedied, and the objects, which are to be accomplished.”28 James Monroe , similarly, stated that the preamble is “the Key of the Constitution. Whenever federal power is exercised, contrary to the spirit breathed by this introduction, it will be unconstitutionally exercised and ought to be resisted.”29 These views, however, were not shared by everyone, and a dispute arose over the preamble’s role. James Madison, for one, expressed his reservations about the preamble’s power. “The general terms or phrases used in the introductory propositions,” he said, “were never meant to be inserted in their loose form in the text of the Constitution.”30 A debate started over whether and in what manner the Constitution’s preamble should be used by the Court.31 Nevertheless, U.S. courts have invoked the preamble in constitutional interpretation. Although the references are inconsistent, rhetorical, and far from conferring independent constitutional rights, they still provide the preamble with some constitutional weight. Courts have used the term “We the people” to define the boundaries of the Constitution’s applicability,32 hold the powers of the federal government,33 indicate that the people—and not the states—are the source of the federal government’s power,34 challenge sovereign immunity,35 and define who is a citizen.36 Similarly, the phrase to “establish Justice” has been invoked to expand federal jurisdiction37 and to support invalidation of legal tender legislation.38 The phrase to “provide for the common defense” has likewise been used to broaden congressional power39 and uphold exclusion from citizenship.40 In addition to its interpretive role, the preamble exerts a meaningful, although indirect, influence of congressional decision making.41 In spite of these references, the U.S. preamble is not, by and large, a decisive factor in constitutional interpretation. Its relatively meager use in constitutional adjudication has been criticized. “It is regrettable that law professors rarely teach and that courts rarely cite the Preamble,” Sanford Levinson notes, as it is “the single most important part of the Constitution.”42 For Levinson, the preamble is “the equivalent of our creedal summary of America’s civil religion.”43 For Mark Tushnet, the “thin” Constitution of the United States is anchored in the principles of the Declaration of Independence and the preamble.44 Milton Handler, Brian Leiter, and Carole Handler charge the courts with ignoring the preamble: “we can discern no reason why [its] rules of construction should not obtain in the constitutional context.”45 They mention that disregard of the preamble conflicts with the status of recital clauses of contracts, legislative declarations of purpose in statutes, and preambles to international treaties46—all of which do guide the court in judicial decision making.47 For them, the preamble ought to play a more significant role in constitutional decisions.48 Other scholars have argued that courts should accord the preamble legal force for the sake of future generations. In referring to Roe v. Wade, Raymond Marcin has claimed that the question of yet-to-be-born descendants requires a solution that finds its foundation in the preamble—the blessings of liberty for the people but also for posterity—which includes fetuses, as well.49 While the preamble is written in a manner that appeals to many, it remains difficult to persuade jurists of its superior legal status.50 Although Justice Harlan stripped the preamble of its legal force, its occasional use in constitutional adjudication indicates that while it is not an independent source of rights neither is it constitutionally irrelevant.51

#### Binding general welfare clause solves extinction: environment and poverty

Arthur Lieber 15, teaching and working in non-profit educational organizations, his focus has been on promoting critical, creative, and enjoyable learning for students in informal settings, 3-22-2015, "Should the common good trump the Constitution?," Occasional Planet, http://occasionalplanet.org/2015/03/22/common-good-trump-constitution/

In June 1963, President John F. Kennedy addressed the nation, urging Congress to pass a comprehensive civil rights act. Setting the stage for the action that he wanted to take, he said, “We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution.” This is the type of rhythmic prose that Kennedy and chief speech-writer Theodore Sorensen wrote. But a basic premise has to be questioned. How clear is the Constitution? If it was really clear, would we even need a Supreme Court to interpret it? Part of the answer is that Kennedy chose to wax poetic rather than to be precise in his language. The Constitution is not clear, and the confusion within it has contributed to everything from the American Civil War to the nearly 100 cases that the Supreme Court must adjudicate each year. Instead of looking at the Constitution as engraved in stone, we may more accurately view it as an organism that is constantly morphing. Everything is subject to review, and the motivations behind requests for change can be both noble and ignoble. The preamble to the Constitution: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. The catch-all phrase in the preamble is “promote the general Welfare.” A fair question to ask now is how helpful is our Constitution at promoting the general welfare. Since the Constitution enumerates the powers of the judicial branch (federal courts), legislative branch (Congress) and the executive branch (Presidency), there are numerous ways in which the general welfare can either be promoted, or in what seems to be more frequently the case, not promoted. If we are to analyze how the three branches of government are not succeeding in promoting the general welfare, we must establish what is the meaning of the largely interchangeable terms, general welfare and common good? A flip, but perhaps, reasonably accurate answer to the question is an adaptation of Supreme Court Justice Potter Stewart’s response to a question about pornography, “I know it when I see it.” And with the “common good,” we know it when we see it. This still leaves considerable uncertainty and confusion, but two recent Supreme Court cases have been decided ways that, to a reasonable, person are clearly deleterious to the common good. Whatever their “constitutionality” might have been is clearly superfluous to the “common good” needs that had to be met. The first case is the infamous Citizens United v Federal Election Commission ruling of 2010. In this instance, the Court was asked if there could be limitations on political spending, particularly by corporations, labor unions, and Political Action Committees (PACs). The Roberts Court essentially ruled that corporations are people and are free to donate as much as they want. Perhaps in an absolutist interpretation of the First Amendment, this was true. But we have always placed reasonable limits on the First Amendment, such as the prohibition from yelling “fire” in a crowded theater. The reason we do this is to protect the common good. It is quite clear that unlimited money in politics does four things that are detrimental to the common good: It distorts exposure of the candidates to the public, with priority going to those who have the most money. It favors candidates who are close to the moneyed interest It reinforces a system of individuals and corporations “buying” political favors from elected officials. Perhaps most insidiously, it favors candidates who are comfortable asking others for money. When people ask why we have such poor elected officials, the answer often is that we have “the best that money can buy,” but not the best that a real democracy can elect. The Citizens United ruling is clearly detrimental to the common good. The second Court case is Shelby County (AL) v. Holder. In this 2013 case, the Roberts court ruled that a key part of the Voting Rights Act of 1965 is “unconstitutional because the coverage formula is based on data over 40 years old, making it no longer responsive to current needs and therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states.” In plain English, what this means is that there is no longer sufficient data to demonstrate that African-Americans face discrimination, particularly with regard to voter access. Since that ruling, many states have instituted modern day poll taxes against African-Americans, other minorities, and the elderly. If the absurdity of that notion wasn’t clear in 2013, it certainly is in 2015. The data that the Court used is clearly negated. Occurrences in Ferguson, MO and numerous other municipalities in the United States have shown that equal rights are hardly here. The Court’s decision clearly aided Republicans (whose constituency is largely made up of people who have few hurdles to clear to vote), rather than Democrats, who typically represent minorities, the poor, and the elderly. Virtually any case that goes before the Supreme Court involves difficult constitutional questions. There are plausible interpretations for either side. What we have seen most recently is a turn by the Court toward making decisions that are consistent with their individual political preferences. That is essentially what happened in Bush v. Gore in 2000, and Supreme Court Justice Sandra Day O’Connor as much as said so. The problem with that decision and many since is that the justices had a very conservative view of the common good, one that favored the wealthy over most of the rest of America. If the battles before the Court are going to be about what is the “common good,” then it is all the more important that the American people elect progressive presidents and members of the Senate so that the Court can work for America. The issues of poverty, inequity, environmental protection, health care, and many more are far too important to be left to the parsing of Supreme Court justices over a document that easily lends itself to contrary interpretations. The common good that progressives see is one that will be beneficial to all Americans, including the wealthy. The Supreme Court, as with the legislative and executive branches of our government, must change to view its work as promoting the common good. If that does not happen, we cannot expect the change that America needs.

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#### The United States federal government should offer to:

-publicly endorse ASEAN’s regional interests and agenda, prioritizing them at ASEAN summits

-publicly endorse Duterte’s role as China coordinator

-negotiate and sign a Bilateral Investment Treaty with the Philippines to facilitate a substantial increase in infrastructure investment in the Philippines

-bring more Philippine troops to the U.S. for training and contact with their US counterparts

#### if the Philippines implements prohibitions on private sector business practices that violate an antitrust worker welfare standard.

#### Positive inducements solve

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The U.S. has neglected the Philippines for too long, providing China with a geostrategic opportunity. For example, Beijing has hosted Philippine President Rodrigo Duterte five times since he took office. Each meeting brings China closer to control over Philippine waters. China is financing a variety of local infrastructure projects, hazarding “debt traps” whereby China gains control of key assets in the Philippines, including the railway connecting Subic Bay and the Clark Economic Zone. If China successfully draws the Philippines into its fold, it will put a strait jacket on the U.S. in the Indo-Pacific, making it significantly more difficult to deter China’s expansion into the South China Sea (SCS). Losing the Philippines may be irreversible. Despite its drift toward Beijing, Manila is not yet lost. Notwithstanding China’s investment, the two governments clash over Beijing’s disregard for Manila’s maritime rights. Duterte initially resolved to ignore the 2016 Permanent Court of Arbitration ruling in favor of a joint oil and gas venture with China; but now he has changed his tone, opting to keep the discussion open regarding the terms of China’s presence in Philippine SCS waters. China continues to ignore the ruling, leaving Duterte in the difficult position of deciding whether to challenge China or submit. Although he may acquiesce to China, Duterte is currently at a crossroads, giving the US a prime opportunity to reverse Beijing’s march across Southeast Asia. This window of opportunity will not stay open for long. At the beginning of October of this year, Duterte visited Russia for five days, discussing joint oil and gas exploration in the SCS and potential arms deals. Duterte also voiced a desire to revise the global order as determined by the U.S. without declaring a complete break from the 1951 U.S.-Philippines Mutual Defense Treaty (MDT). So Duterte’s lack of confidence in Beijing will not necessarily drive him to Washington. Duterte’s field of potential great power allies is growing, meaning the U.S. cannot afford to neglect the Philippines any longer. To strengthen its position in the Philippines and thus in the first island chain, the United States must achieve two key goals: diversify its diplomatic engagement with Manila and coordinate military resources and strategy. Diplomatic Engagement The U.S., including the Navy specifically, must diversify its diplomatic engagement in the Philippines. The US has a deep reserve of good will with the Philippine people. Philippine Secretary of Foreign Affairs Teodoro Locsin pointed this out in the South Morning China Post on September 24, 2019: “Eighty per cent of the Filipinos are nuts about Duterte; 90 per cent of Filipinos are nuts about the United States.” It is time to reinvigorate that well. Addressing the Elephant in the SCS (Short-Term) Relations between China and the Philippines have ebbed and flowed during Duterte’s tenure, but the current low requires the U.S. to respond immediately to ensure Manila does not swing to Beijing. In the short-term, the U.S. must credibly communicate to Duterte that his interests are more likely to be realized if aligned with U.S. interests as opposed to those of China or Russia. First, the U.S. should directly consult Duterte and his naval officers regarding their concerns and interests in the SCS. Beijing is inflexible regarding Duterte’s pleas, meaning the Navy can capitalize on Manila’s desire for flexible alternatives by meeting with Duterte and his naval officers to coordinate interests. China hopes to finalize an SCS code of conduct (COC) agreement with the Philippines and other ASEAN members before 2021, while the Philippines serves as ASEAN’s China coordinator. Recent disagreements between Duterte and Xi may stall the finalization of such a COC. Therefore, the President and other top naval and diplomatic officers should meet with Duterte and other naval officers quickly to prevent the COC framework from acting against U.S. interests. Such a meeting should be public to communicate that the U.S. is friendly to the interests of Southeast Asian states. This consultation, rather than exhibiting mere diplomatic theater, should accomplish two goals: support counter-arrangements ensuring the Philippines does not sign a COC favoring China and propose joint freedom of navigation operations (FONOPS) in the SCS. Second, the United States should initiate backchannel diplomatic discussions with the Philippines. Initial public demonstrations of support are helpful, but Manila will commit to little publicly to avoid the risk of offending China or being drawn unwillingly into a war. Duterte fears that the only military option is war, but he has not yet constructed a ladder of controlled military responses designed to escalate conflict to deter China without provoking them. Therefore, concurrent with public engagement, lower-level officials from the U.S. and the Philippines should meet to achieve two main goals: construct a ladder of progressive, intermediate military responses and affirm specific U.S. defense commitments. For example, the U.S. should pledge to defend the Second Thomas Shoal if China pushes against the Philippine military in the area, and officials from both militaries should agree on a series of escalatory responses if China does disrupt Philippine military activity in the area. Similarly, as Adrien Chorn and Monica Michiko Sato recently argued, clarifications to the MDT could be discussed whereby the Philippines is empowered to respond more directly to China’s gray zone tactics. Philippine Leadership in an Integrated ASEAN (Medium-Term) Beyond short-term engagement, the U.S. must strengthen cooperation between the Philippines and ASEAN

in order to wean Duterte off China. In the SCS dispute and the Belt and Road Initiative (BRI), Beijing prefers bilateral engagement with individual member states over interaction with ASEAN as an institution. The U.S. should encourage the opposite in four ways. First, the U.S. should foster regional self-determinism in Southeast Asia with Filipino leadership. Despite efforts to appear united, ASEAN member states have disagreed on how to deal with China. Positions range from Cambodia seeking to deflect criticism against China to Vietnam expressly combatting a COC on Beijing’s terms. This position asymmetry makes it easier for China to divide and conquer. The Philippines is uniquely positioned to deal with this issue as coordinator of ASEAN-China relations until 2021. To capitalize on that position, the U.S. should publicly endorse ASEAN’s regional interests and agenda, prioritizing them at ASEAN summits. The U.S. should also publicly endorse Duterte’s role as China coordinator and his crucial role in shaping ASEAN’s future. Second, the U.S. should increase engagement with ASEAN as a unit, specifically in cooperation with the Philippines. China’s strategy to this point has involved dividing and conquering ASEAN, but the resulting division in ASEAN hampers Beijing’s ability to secure unanimous support for a COC agreement in the SCS. The U.S. and the Philippines should arrange a special ASEAN summit to address ASEAN regional goals and the problem of China in the SCS. Although the U.S. meets with ASEAN members during the ASEAN Regional Forum (ARF) and the East Asia Summit, China’s participation in the ARF and the ASEAN+3 coupled with its geographic proximity gives the U.S. little room to distinguish itself as a more viable ally. With a separate meeting, the U.S. can cut through the diplomatic clutter, engage in a more focused discussion on the SCS dispute, and pave the way for the Philippines to establish a consensus on how to respond to the dispute. It will also help shift the Philippines’ diplomatic and political focus away from dependence on great powers to an agenda establishing regional self-determinism. Third, the U.S. must partner with the Philippines to enforce the rule of law. In the SCS dispute, a committee of experts could set forth the parties’ various rights under UNCLOS as a binding declaration or as the basis of final negotiations between the claimant states. The Navy should also abide by UNCLOS to demonstrate its support. Consolidating claims and ratifying UNCLOS will solidify an international diplomatic coalition that imposes significant costs on the Chinese navy. Fourth, the U.S. must combat China’s BRI infrastructure spending in the Philippines and in Southeast Asia. Despite its various debt-related dangers and accountability concerns, the BRI remains an attractive prospect to poorer states suffering from infrastructure deficits. Since Southeast Asia is ripe for infrastructure and connectivity investment, the U.S. must increase its infrastructure investment immediately. The U.S. currently has only one free trade agreement with a state in the region (Singapore) and no bilateral investment treaties (BITs), so the U.S. should negotiate and sign BITs including infrastructure investment with the Philippines, Indonesia, and Malaysia, with an option to increase infrastructure spending in other ASEAN member-states. The U.S. should also discuss infrastructure investment programs with ASEAN as an institution. In pursuit of this agenda, the U.S. should not try to mirror the BRI. China uses government funding methods (sovereign wealth funds and government-funded development banks) to accomplish the BRI that the U.S. cannot match in speed and discretion. The U.S. can, however, disrupt Chinese infrastructure investment by investing strategically in the infrastructure of ASEAN member states without using loans or debt financing, thus providing a more attractive option than applying for BRI loans. Japan already provides alternatives to the BRI in Southeast Asia and elsewhere. The U.S. should act likewise to dilute China’s influence and build good will that will streamline military mobilization later. Engaging in these diplomatic activities now will supply a diplomatic need that China refuses to fulfill, giving the United States a stronger foothold from which to engage in effective military strategy. Employing aggression or diplomacy exclusively will fail but developing soft power first will amplify hard power exertions. Military Coordination Militarily, the U.S. must increase its ability to deter and, if necessary, defeat China at the first island chain. While such a strategy encompasses far more than only the Philippines (such as pointed out by Mahnken, et al., in “Tightening the Chain”), the Philippines are nonetheless central to any strategy focusing on the first island chain. Consequently, the U.S. military must coordinate with Manila. Short- and medium-term changes to America’s military posture, especially its naval posture, can help achieve these goals. Renewing Ties and Boosting Capabilities (Short-Term) There are two main actions the U.S. can take immediately regarding the Philippines that will enhance deterrence of Chinese aggression and dramatically raise the costs for China should hostilities break out. First, the U.S. should increase the rotation of American military personnel into the Philippines. This initially requires renewing and reinvigorating its ties with the Philippine military. Although reconnection is already underway as demonstrated by the Enhanced Defense Cooperation Agreement (EDCA) and recent combined operations exercises, more should be done. The U.S. should do all it can to bolster friendly elements within the Philippine military and, if necessary, to prevent any purge of U.S.-friendly officers. More Philippine troops should be brought to the U.S. for training and contact with their US counterparts and vice versa. The U.S. officer rotations should focus on re-establishing operational capabilities particularly those relevant to the SCS, furthering progress made under the EDCA. While the EDCA prohibits permanent U.S. bases, the U.S. can rotate personnel such that in practice the American presence is permanent. Moreover, the tempo of training and joint exercises can increase. The U.S. should also share command functions with its Philippine counterparts in order to provide experience and improve capabilities. This will also have positive secondary effects on Philippine moral and confidence.

## Advantage 1

### 1NC---Heg Bad

#### Hegemony is unsustainable---military dominance is declining and China has overtaken an economic lead---current transition will be smooth and stable.

Layne 18—Christopher Layne, University Distinguished Professor of International Affairs, Robert M. Gates Chair in National Security at the Bush School of Government and Public Service at Texas A&M University, Ph.D. in Political Science from the University of California, Berkeley, 2018 (“The US–Chinese power shift and the end of the Pax Americana,” *International Affairs—Oxford University*, January, <https://www.chathamhouse.org/sites/default/files/images/ia/INTA94_1_6_249_Layne.pdf>, Volume 94, AIvackovic)

American decline redux

Today the military, economic, institutional and ideational pillars that have supported the Pax Americana are being challenged by China. This raises two fundamental and intimately connected questions: if China surpasses, equals or even approximates the United States in these dimensions of power, can the Pax Americana endure? And, if it cannot, what will replace it? Posing these questions raises the contentious issue—contentious at least in the US—of whether American power is, in fact, declining. During his abortive 2012 run for the Republican presidential nomination, Jon Huntsman—President Obama's Ambassador to China, and now President Trump's Ambassador to Russia—succinctly expressed the prevailing view of the US foreign policy establishment when he said: ‘Decline is un-American.’ Leading US security studies experts agree. These primacists argue that the extent of China's rise—and hence of America's decline—are, like premature reports of Mark Twain's death, greatly exaggerated. Primacists believe the international system is still unipolar, and that US power will keep it that way for a long time to come.

This claim is increasingly dubious. Indeed, the case made by the ‘declinists’ of the 1980s—notably Paul Kennedy, Robert Gilpin, David Calleo and Samuel P. Huntington—looks stronger every day.23 Contrary to the portrayal of their argument by many of their critics, the 1980s declinists did not claim either that America's post-Second World War power advantages had already dissipated, or that the United States was on the brink of a rapid, catastrophic decline. Rather, they pointed to domestic and international economic drivers that, over time, would cause American economic power to diminish relatively, thereby shifting the balance of power. In essence, the declinists believed that the United States was experiencing a slow—‘termite-like’—decline caused by fundamental structural weaknesses in the American economy that were gradually nibbling at its foundations.24 Kennedy himself was explicitly looking ahead to the effects this termite decline would have on the US world role in the early twenty-first century. As he wrote:

The task facing American statesmen over the next decades … is to recognize that broad trends are under way, and that there is a need to ‘manage’ affairs so that the relative erosion of the United States' position takes place slowly and smoothly, and is not accelerated by policies which bring merely short-term advantage but longer-term disadvantage.25

The unwinding of the Pax Americana

Decline may be ‘un-American’, but that does not mean it isn't happening. America's ‘unipolar moment’ has turned out to be rather—well, momentary.26 The Great Recession that began in 2007–2008 did not end America's unipolar ascendancy. It did, however, focus attention on, and accelerate, the ebbing of American power—the evidence of which has cumulated rapidly over the ensuing ten years. This slippage of US dominance is chipping away at each of the four pillars on which the Pax Americana was erected: military power; economic power; institutions; and soft power. As these pillars erode, it becomes increasingly doubtful that the Pax Americana can endure.

China's challenge to American military power

Until now the dominant view within the US foreign policy establishment has been that military strength is the one area in which America's advantage is insurmountable (at least within any meaningful time-frame). American military power is considered by US policy-makers and many security studies scholars to be the geopolitical trump card—no pun intended—that will ensure continuing American dominance even if China closes the economic and technological gaps separating it from the United States.27 However, some within the foreign policy establishment are beginning to question this viewpoint. Important recent studies of the Sino-American military balance suggest that some analysts are taking a fresh look at the question of how long it will take China to catch up with the US militarily.

China and the United States face different grand strategic challenges. As self-styled global hegemon, America must be able project decisive military power to the three regions it considers vital to both its security and its prosperity: Europe, the Middle East and east Asia. In contrast, China's strategic goals, at least for now, are more limited. China aims at dominating its own geographic backyard: that is, it seeks regional hegemony in east and south-east Asia, which have become the focal points of Sino-American geopolitical competition. Even if China is not at present able to mount a global challenge to the US, there is evidence that it is beginning to draw level with the United States in regional military power in east Asia.

In a recent report on the Sino-American military balance, the RAND Corporation refers to the ‘receding frontier of US military dominance’ in east Asia.28 According to RAND, the trend lines in the Sino-American military rivalry in east Asia are not favourable for the United States: ‘Although China has not closed the gap with the United States, it has narrowed it—and it has done so quite rapidly. Even for many of the contributors to this report, who track military developments in Asia on an ongoing basis, the speed of change … was striking.’29 In a recent book, Roger Cliff, an east Asian security expert at RAND, says that by 2020 China's military establishment will be almost on an equal footing with America's with respect to doctrine, equipment, personnel and training (though still lagging behind in organizational structure, logistics and organizational culture). Consequently, he predicts that by 2020 American military dominance in east Asia will be significantly eroded.30 He predicts that the 2020s will witness a power transition in east Asia and that at this point China will be able to challenge the regional status quo.31

American economic decline and the impairment of US economic hegemony

During the past decade, signs of waning US economic power—and China's growing economic muscle—have become too numerous to ignore. Since the onset of the Great Recession, China has successively taken top position in the world in exports (passing Germany); in trade (passing the United States); and in manufacturing (claiming a title the United States had held for a century). In 2014 the World Bank made the stunning announcement that China had vaulted past the United States to become the world's largest economy (measured by purchasing power parity (PPP);32 and in the early to mid-2020s China is predicted to overtake the United States in GDP measured by market exchange rate.33 These shifts in the relative economic power of China and the United States have enormous economic and geopolitical implications. Indeed, in July 2017 Christine Lagarde, managing director of the IMF, stated that in ten years' time the organization's headquarters—which are required by its by-laws to be located in its member country with the largest economy—could be in Beijing.34 Taken together, these indicators paint a clear picture of relative economic decline.

American primacists have advanced a number of clever but unconvincing arguments in an attempt to downplay the significance of the ongoing economic power shift from America to China. For example, some primacists assert that per capita GDP is a better yardstick of national power than aggregate GDP; that newly developed metrics of national power have diminished the importance of GDP as a measure of a state's economic power; that China is far behind the United States in advanced technology; and that China is incapable of doing innovation.35

This last claim is ubiquitous among primacists.36 It is, however, undermined by recent developments. For example, in September 2016 China began operating the world's largest radio telescope, which is intended to project China's ambitions deep into the universe, and bring back the kind of dramatic discoveries that win honours such as Nobel Prizes.37 In August 2016 China launched the world's first quantum satellite, which could lead ‘to new, completely different methods for transmitting information’.38 In another example of how China is catching up with the United States in innovation and technology, in June 2016 a Chinese computer (using made-in-China microprocessors) topped the ranking of the world's fastest supercomputers.39 In July 2017 China's State Council announced an ambitious plan to sprint to the front of the pack in artificial intelligence (AI), including both military and civilian applications.40 Indeed, The Economist recently observed that already ‘China could be a close second to America—and perhaps even ahead of it—in some areas of AI’.41 And China is moving to the forefront in green technologies (solar panels and wind-generated power) and in electric cars.42

The waning of US economic dominance may not be obvious to primacists, but it is perfectly apparent to many observers in the real world.43 The weakening of US relative economic power, which became unmistakably clear during the Great Recession, has undercut the Pax Americana both by compromising the United States' ability to manage the international economy and by shifting the Sino-American geopolitical balance in east Asia.

#### Clinging causes great power war.

Beinart 18 Peter Beinart is a Professor of political science at the City University of New York M.Phil. in international relations from Oxford University; 2018; America Needs an Entirely New Foreign Policy for the Trump Age; The Atlantic; <https://www.theatlantic.com/ideas/archive/2018/09/shield-of-the-republic-a-democratic-foreign-policy-for-the-trump-age/570010/> - BS

In the decades since the cold war ended, this once-familiar logic has been largely forgotten. When the Soviet Union fell, the specter that haunted Roosevelt and his successors—a hostile power or powers dominating Europe and Asia and setting their sights on the Western Hemisphere—became so remote that it could no longer guide foreign-policy debate. What filled the gap was a bipartisan ethic of “more.” If the Soviet empire had demarcated the limits of American power, then a world without those limits—in which America and Americanism dominated ever larger swaths of the globe—constituted progress. If some American hegemony was good, more American hegemony was better. In the 1940s, foreign-policy elites generally asked: What must America do overseas to ensure its freedom and prosperity at home? Since the 1990s, they have more often asked: What must America do at home to ensure its preeminence overseas?

Over the past quarter century, this ethic of “more” has contributed to a vast expansion of America’s international commitments—commitments the American people have repeatedly proved unwilling to bear. The Bush administration greased public support for invading Iraq by insisting that within months the U.S. would withdraw most of its troops. But as those predictions proved untrue—and the war grew ever costlier and bloodier—public opinion soured. George W. Bush held out against the demand to withdraw troops for a few years, even sending reinforcements in the 2007 “surge.” By 2008, however, with violence down but Iraq still extremely fragile, he caved to popular opinion and agreed to withdraw all U.S. troops by the end of 2011. Obama carried out that agreement and Iraq plunged back into civil war.

Because Afghanistan was al-Qaeda’s base on 9/11, and because the U.S. has kept its troop levels there comparatively low, popular support for that war has proved easier to sustain. But the Afghan War also underscores America’s solvency problem. It is politically sustainable because the United States currently deploys only 15,000 troops there. However, few military experts believe that is enough to defeat the Taliban or even force them into a political settlement. So the United States can continue fighting in Afghanistan only because America’s leaders do not ask Americans to expend the blood and treasure there necessary to achieve Trump’s stated goal of “creat[ing] the conditions for a political process to achieve a lasting peace.”

Still, foreign-policy elites keep proposing interventions that enjoy too little public support to succeed. In 2011, despite polling suggesting public wariness, Obama helped nato facilitate the overthrow of Muammar Qaddafi. Libya soon dissolved into chaos. It’s questionable whether any amount of nation building could have stabilized the country after Qaddafi’s fall. But either way, Americans lacked the appetite for it, and so the United States failed to secure Libya, too.

The exception to this pattern has been the military campaign America launched in 2014 against isis, which, like the Afghan War, enjoyed public support because Americans viewed it as a response to direct attacks on them. Now that that war is largely over, Trump advisers have proposed keeping U.S. troops in Syria to counter Iran. Trump himself seems skeptical, likely because he grasps what polls show: that absent a direct threat, Americans remain opposed to expanding America’s military footprint in the Middle East.

With the war against isis dying down, Defense Secretary James Mattis declared in January that “great-power competition—not terrorism—is now the primary focus of U.S. national security.” But in its relationships with great powers, America’s solvency problems are, if anything, worse. That’s because the United States—in keeping with its general post–Cold War reluctance to grant competitors a sphere of influence—has tried to extend its power right up to the borders of Russia and China. That risks sparking conflict in places that the Russian and Chinese governments consider crucial to their security but the American people do not consider crucial to theirs. Which means yet more promises the American government cannot keep.

Consider american policy toward russia. During the Cold War, no American president considered Eastern Europe important enough to American security to risk war over. But in the 1990s, with Russia enfeebled, many policy makers assumed that risk had disappeared. So the Clinton administration moved to admit the former Warsaw Pact countries of Poland, Hungary, and the Czech Republic into nato, thus making their defense an American obligation.

When Trump recently questioned America’s obligation to nato’s newest member, Montenegro, he provoked outrage. But it’s worth remembering that in the 1990s, Americans far wiser than Trump considered even Clinton’s nato expansion a dangerous extension of America’s commitments. George Kennan, America’s most famous Cold War strategist, warned that the move would “inflame the nationalistic, anti-Western and militaristic tendencies in Russian opinion.” John Lewis Gaddis, America’s most famous Cold War historian, insisted it was “short-sighted” for Americans to believe that “the Russians have no choice but to accept what nato has decided to do” because Russia “retains a considerable capacity to do harm.”

More than 20 years later, nato’s expansion to include Montenegro and the former Soviet Republics of Estonia, Latvia, and Lithuania makes Kennan’s and Gaddis’s concerns all the more relevant. Could an American president rally the American people to defend a country near Russia’s border that some of them may never have heard of? Is that commitment solvent? We simply don’t know.

This doesn’t mean Democrats should abrogate America’s nato commitments—or even publicly question them, as Trump has. nato has helped undergird an unprecedented era of European freedom, prosperity, and peace. Reneging on America’s commitment to any member could destroy the alliance as a whole, with consequences no one can foresee. So honoring America’s commitment to its newest members is a risk Democrats must take.

But since it is a risk, the post–Cold War pattern of expanding nato with little public discussion—since 1996, the subject has rarely come up in presidential debates—should end. The lesson of the past decade is that pushing nato ever closer to Russia’s borders dangerously exacerbates America’s solvency gap.

Consider what has happened in Georgia and Ukraine. In 2008, the Bush administration convinced its European allies to pledge that both countries would eventually enter nato. Enraged, Russian officials threatened to help Georgia’s two autonomous and largely pro-Russian regions, Abkhazia and South Ossetia, secede. And when Georgia’s pro-American president sent troops into South Ossetia that August, Russia did just that—it recognized Abkhazian and South Ossetian independence, blockaded Georgia’s coast, and bombed its capital. Moscow made the same point, even more harshly, a half-decade later in Ukraine, when protesters helped replace a pro-Russian government with a pro-Western one. The United States celebrated the shift of power. But Vladimir Putin responded by seizing the Crimean peninsula and fomenting an armed secessionist movement in Ukraine’s heavily Russian-speaking east, thus plunging the country into civil war.

In 2015, Joe Biden told the Ukrainian Parliament, “We will not recognize any nation having a sphere of influence. Sovereign states have the right to make their own decisions and choose their own alliances.” That sentiment still governs the attitude of many congressional Democrats today. It’s why they demand that Trump maintain American sanctions until Russia relinquishes Crimea—even though barely anyone believes American sanctions can bring that about. It’s why they support arming Ukraine with lethal weapons. And it’s why they insist on keeping open the possibility of nato expansion into Ukraine even as Russia stations troops on Ukrainian soil.

But Biden’s words, while stirring, were delusional. The United States does not oppose spheres of influence. It has had its own in the Western Hemisphere since 1823. It’s called the Monroe Doctrine, which declares that the U.S. will not tolerate military alliances between foreign powers and the countries to America’s south. It’s the reason Mexico cannot enter into a military alliance with Russia.

Until today’s Democrats recognize—as Cold War presidents did—that the United States cannot prevent a Russian sphere of influence in those territories in which the Russian government is willing to lose lives but the American people are not, Democratic foreign policy will produce more insolvency, more promises America can’t keep.

But the pursuit of unipolarity poses its greatest danger in America’s relations with China. U.S.-Chinese relations are U.S.-Russian relations in reverse. Although geopolitically aggressive, Russia is economically and demographically a declining power. It lost a large sphere of influence, and America is now seeking to deny it a smaller one. China is a rising power. It is trying to establish a sphere of influence, which America opposes. The key difference is that in the case of Russia, America’s solvency problem is static: Because Russia is not gaining economic and military strength relative to the United States and its European allies, America’s solvency problem will not grow unless it incurs new obligations. In East Asia, by contrast, China’s relative power is growing. That means America’s solvency problem—the gap between its commitment to deny China a sphere of influence and its power to do so—is growing, too.

The balance of economic power is shifting decisively in China’s favor. When the Soviet Union collapsed, America’s share of the global economy was 15 times as large as China’s. Today, it’s roughly 1.5 times as large. Experts predict that by 2040, China’s economy will be 1.5 times as large as America’s.

This economic shift is producing a military shift. Washington still spends far more than Beijing on defense, but over the past two decades the Chinese military has dramatically improved. And while the American military is spread across the world, China focuses on its own neighborhood. Thus, a 2017 Rand Corporation study concluded that “while the United States maintains unparalleled military forces overall, it faces a progressively receding frontier of military dominance in Asia. Chinese military modernization, combined with the advantages conferred by geography, have endowed China with a strong military position vis-à-vis the United States in areas close to its own territory. As a result, the balance of power between the United States and China may be approaching a series of tipping points.” The first tipping point, Rand suggests, will be Taiwan.

Taiwan is the most dangerous example of American foreign-policy insolvency in the world. The 1979 Taiwan Relations Act, signed when China’s economy was smaller than Spain’s, commits the U.S. “to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.” As Hofstra University’s Julian Ku has observed, the language is almost as strong as the language in America’s treaties with Japan, South Korea, and Australia.

This quasi-obligation is insolvent for two reasons. First, the people of mainland China care far more about Taiwan than Americans do. China’s government doesn’t merely consider Taiwan part of its sphere of influence. It considers it part of China, and has since the 17th century. In the centuries that followed, the Western powers and Japan repeatedly invaded and divided China, and many Chinese see the reunification of Taiwan as crucial to overcoming that humiliating history. This creates a vast asymmetry of public will. In 2017, the Committee of 100, a Chinese American group, asked people in both countries to name their “two greatest concerns about the U.S.-China relationship.” Among mainland Chinese, Taiwan came in first. Among Americans, it didn’t make the top seven. In fact, when asked whether the United States should defend Taiwan if it declares independence, Americans consistently, by substantial margins, say no.

Alongside this asymmetry of public will is a growing asymmetry of military power. Lyle Goldstein, a China expert at the Naval War College, notes that “China’s military modernization has steadily outstripped Taiwan’s armed forces.” And it’s not just Taiwan that’s increasingly outclassed. The United States is, too. Within 500 miles of Taiwan’s capital, notes the Rand study, China maintains 39 air-force bases. The United States maintains one, which, according to Rand, “even a relatively small number of accurate [Chinese] missiles could shut … at the outset of hostilities.” In the words of the Australian military strategist Hugh White, “America can no longer defend Taiwan from China and a policy towards Taiwan that presumes that it can is unsustainable.” In the years to come, America must either take steps to alter this unsustainable commitment or risk the possibility that China will do so itself.

So what might a democratic alternative to both Trump and his hawkish critics—an alternative built upon the sacrifices Americans are actually willing to make rather than the obligations that unipolarity requires—look like?

It would start with the question inherent in Walter Lippmann’s phrase: What kind of shield does the American republic require in order to thrive? When Roosevelt and Kennan pondered this question in the 1940s, even America’s most powerful adversaries had trouble reaching the United States directly. The Atlantic and Pacific were formidable moats. That’s why both men worried primarily about a two-step process in which Nazi Germany or the Soviet Union first consolidated power over Eurasia and then crossed the oceans.

But since World War II, two technologies have made it easier for adversaries to bypass step one and threaten the United States without first dominating other continents. The first is nuclear weapons. Luckily, since the mid-20th century, America has pursued a strategy that has protected it against nuclear strikes by even its most fearsome foes. That strategy is nuclear deterrence, and it merely requires the United States to possess enough nuclear weapons, and sufficient means to deliver them, to credibly declare that America will destroy any regime that uses nuclear weapons against the United States. The strategy does not require foreign leaders to care about their people’s lives, only their own. Which helps explain why it worked against Joseph Stalin and Mao Zedong. And why there is every reason to believe it will work—indeed, has been working in the 12 years since North Korea’s first nuclear test—against Kim Jong Un.

Nuclear deterrence is less effective against a terrorist group with no regime or territory to protect, led by people who welcome death. But almost 17 years after September 11, the United States and its allies have proved capable of keeping nuclear weapons out of the hands of terrorists. In fact, the United States has prevented any 9/11-scale terrorist attack on American soil: Since 2001, foreign-born terrorists have killed on average one American a year inside the U.S.

Unfortunately, the United States is less shielded from a second, more recent technology that enables direct attack: cyberwarfare. If the 2017 Intelligence Community Assessment that “Russian President Vladimir Putin ordered an influence campaign in 2016 … to undermine public faith in the US democratic process” is correct, then preventing another such attack—either on America’s elections or America’s critical infrastructure—should be among America’s highest foreign-policy priorities. Roosevelt and Kennan worried that if a hostile power dominated Europe or Asia, it could dominate the great oceans, thus leaving America so insecure that its democracy crumbled or so isolated that its economy did. Now Russia—or another adversary—can threaten American freedom and prosperity by attacking the machinery that undergirds America’s elections, banking system, or electricity grid. Few other threats put the republic itself at such risk.

So Democrats are right to blast Trump for not making cyberdefense a priority. They’re right to demand reprisals against Russia in hopes of deterring its government from repeating in 2018 and 2020 what it did in 2016. And they are right to work with America’s allies to try to deter Russia from undermining their democratic systems, too.

But in their desire to be tough on Putin, congressional Democrats are conditioning sanctions relief not only on Russia stopping its interference in American elections, but on Russia stopping its interference in Ukraine and even Syria. This combines a subject that is crucial to America’s security with subjects that are not, and defines America’s goals so expansively that they exceed America’s means. Truly guarding against Russia’s threat to the American homeland requires prioritizing it.

To protect what matters most—the integrity of its elections and those of its allies—America should compromise where it matters less: in Russia’s backyard. If Russia stops sabotaging elections in nato countries, nato should pledge to push no closer to Russia’s borders. Instead, the United States and its allies should pursue a status for Ukraine and Georgia similar to the status that Austria and Finland enjoyed during the Cold War. Because Soviet troops entered both countries during World War II, the United States could not deny Moscow some influence over them after the war. So each country struck a deal that granted it control over its domestic affairs (both became democracies) in return for not pursuing an anti-Soviet foreign policy. That should be America’s goal for Ukraine and Georgia today. Recognizing that U.S. sanctions almost certainly won’t reverse Russia’s annexation of Crimea, the United States might ultimately accept it as part of a deal that removed Russian troops and weaponry from Ukrainian soil.

This would not be another Warsaw Pact. It would be more like the Monroe Doctrine, as America’s leaders interpret it today. Few Americans now claim the Monroe Doctrine gives the United States the right to dictate the internal affairs of America’s neighbors to the south. If the Dominican Republic nationalizes its banks, the U.S. will not send in the Marines. But America will not permit the Dominican Republic to join a military alliance with Moscow or Beijing. America’s goal should be for Russia to follow that same principle when it comes to Georgia and Ukraine.

A similar approach should guide America’s relations with China. The U.S. must try to deter China from threatening the American homeland militarily and politically, through cyberattacks or other forms of interference. But it must also prevent China from threatening the homeland through an economic relationship that benefits American elites while weakening the American middle class.

In his book The American Way of Strategy, Michael Lind quotes Franklin D. Roosevelt as declaring in 1936 that “the very nature of free government demands that there must be a line of defense held by the yeomanry,” what we would today call the middle class. “Any elemental policy, economic or political, which tends to eliminate these dependable defenders of democratic institutions, and to concentrate control in the hands of a few small, powerful groups is directly opposed … to democratic government itself.” This concentration certainly threatens democratic government today. And preventing it should thus be central not only to American domestic policy, but to American foreign policy as well.

Trump won the presidency in part by arguing that American foreign policy focused too much on extending America’s global footprint and not enough on safeguarding America’s middle class. And he was partially right. A “shield of the republic” foreign policy would use America’s limited influence over China to protect, to whatever degree possible, American workers from competing with workers who lack even minimal labor protections. One way to do that would be to adopt a suggestion made by the Harvard economist Dani Rodrik. Rodrik notes that the United States has laws against “dumping”: It imposes tariffs on foreign goods sold in the United States for less than they cost to produce. He suggests extending such tariffs to “social dumping”: goods exported to the United States by workers without basic labor rights.

Any tariffs would have to be wielded carefully—not in the rash, jumbled way Trump has deployed them. (And certainly not against democracies whose labor protections are often better than America’s). But, as with Russia, jettisoning the assumption that America must deny China a sphere of influence might help policy makers husband American leverage for the things that matter most.

A 1949 State Department planning paper declared that the U.S. should seek to prevent the “domination of Asia by a nation or coalition of nations.” Since such domination could threaten American trade across the Pacific, and even the safety of the Western Hemisphere, precluding it should remain America’s goal. The United States can achieve that goal by maintaining its alliances with Australia, South Korea, the Philippines, and Japan and deepening its relationship with India, whose population will soon surpass China’s.

America’s commitments to these countries will only grow insolvent if the U.S. defines them as requiring it to defend disputed islands like Scarborough Shoal in the South China Sea (claimed by both China and the Philippines) or the Senkaku/Diaoyu Islands in the East China Sea (claimed by both China and Japan)—islands far from the heartlands of both U.S. allies. And that insolvency will grow worse if the United States, in its zeal to deny China a sphere of influence, takes on a new obligation—the East Asian equivalent of Ukraine and Georgia—by agreeing to defend Vietnam. Vietnam has a roughly 800-mile-long land border with China, a bevy of maritime disputes with Beijing, and a tradition of fierce anti-Chinese nationalism. The U.S. is better off helping Hanoi—in the tradition of Austria and Finland vis-à-vis the Soviet Union or, for that matter, Mexico vis-à-vis the United States—accommodate its foreign policy to the giant next door while preserving its right to manage its domestic affairs.

The most wrenching element of this strategy involves Taiwan. The island is an extraordinary success story, a powerful testament to the compatibility of democracy and Chinese culture. But the United States probably cannot defend Taiwan today. It almost certainly won’t be able to in a decade or two. If America does not face the insolvency of its current commitment to Taiwan now, it may eventually be made to face it, perhaps through war.

If China renounces the use of force, the United States should support its reunification with Taiwan along the principle of “one country, two systems.” The U.S. should ask China to commit publicly not to station troops or Communist Party officials in Taiwan, and to let Taiwan manage its domestic political affairs. Would Beijing adhere to such an agreement once unification occurred? The best precedent is Hong Kong. Two decades after reunification, it remains substantially freer than the rest of China. (Freedom House rates countries on a scale of one to seven, with one being freest and seven being least free. In 2018, Hong Kong received a 3.5 and China got a 6.5.) But Hong Kong would almost certainly be freer were it not under Beijing’s control.

It’s likely that under reunification people in Taiwan would lose some of their freedom as well. But, even if Taiwan sunk to Hong Kong’s level, it would remain far freer than Vietnam, a country some Washington hawks are clamoring to ally with in order to contain China.

There are two primary arguments against the Democratic foreign policy outlined above. The first involves credibility. If the United States abandons Taiwan, the argument goes, it will undermine the credibility of its commitment to South Korea, the Philippines, and Japan. Similarly, if America won’t fight Russia in Ukraine, neither Moscow nor Riga will believe America’s promises to fight Russia in Latvia. During the Vietnam War, this logic was dubbed the “domino theory”: If the United States didn’t defend Vietnam, its credibility would collapse and other anti-communist “dominoes” would soon fall.

But the theory is wrong. Decades of academic research show that, in the words of the Dartmouth College political scientists Daryl Press and Jennifer Lind, “there’s little evidence that supports the view that countries’ record for keeping commitments determines their credibility.” The Soviets and West Germans did not conclude that because America would not defend South Vietnam it would not defend West Berlin, because they understood that America cared more about West Berlin than it cared about South Vietnam, and had a greater capacity to defend it. Similarly, when predicting whether the United States will defend Japan, neither Beijing nor Tokyo will look at whether America defends Taiwan. They will look at whether it is in America’s interests, and within America’s power, to defend Japan.

Far from bolstering a country’s credibility, insolvent commitments drain its finances, overstretch its military, and undermine its reputation for sound judgment. As Kennan put it, “There is more respect to be won in the opinion of this world by a resolute and courageous liquidation of unsound positions than by the most stubborn pursuit of extravagant or unpromising objectives.”

The other major critique is moral: How can America let authoritarian powers bully their neighbors, especially when those neighbors only want the same freedoms that we prize in the United States? The answer begins with John F. Kennedy’s reminder that peace, too, is “a matter of human rights.” People’s lives don’t generally improve when their country becomes a battlefield. If the United States could actually defend Ukraine, Georgia, or Taiwan, then perhaps the horror of war might be worth it. But America cannot, at least not at a cost the American people would be willing to pay. Morally, therefore, America better serves these countries by helping them reach the best possible accommodation with their great-power neighbors than by encouraging their defiance with promises America can’t keep. Prudence, argued Edmund Burke, is “not only the first in rank of the virtues political and moral but … is the director, the regulator, the standard of them all.” In other words, what truly matters morally is not the purity of America’s rhetoric but the consequences of America’s policies for the people they affect most.

Morally, Americans must also consider something else: Risking conflict to deny great powers a sphere of influence in their own neighborhoods undermines the chances of cooperating with them everywhere else.

Over the past decade, American cooperation with China and Russia has proved crucial to mitigating some of the world’s greatest threats. In 2010, China, along with Russia, backed the United Nations sanctions that helped pave the way for the Iran nuclear deal. In 2014, Beijing and Washington cooperated to quell the Ebola crisis, which experts warned might infect 1.4 million West Africans. In 2016, U.S.-Chinese cooperation proved crucial to the ratification of the Paris climate-change agreement (from which Trump has subsequently withdrawn).

The more America challenges Beijing and Moscow on their borders, the harder it will be to sustain, let alone deepen, this cooperation. Only U.S.-Russian diplomacy can extend the Strategic Arms Reduction Treaty, which expires in 2021, and thus avert a costly and dangerous nuclear-arms race. Only great-power cooperation can end Syria’s monstrous civil war. The United States has some influence over the Kurds and Gulf-backed Sunni Arab rebel groups. But only Moscow, along with Iran, can deliver concessions from Bashar al-Assad’s regime. It’s the same in Afghanistan. The United States enjoys more leverage over the government in Kabul, but Russia enjoys more influence over the Taliban and China wields more influence over Pakistan.

Great-power cooperation is also crucial to easing the crisis on the Korean peninsula. No matter what he tells Trump, Kim Jong Un is unlikely to give up his nuclear weapons. But preventing further nuclear and missile tests would reduce the chances of war and facilitate the reconciliation with South Korea that could improve North Korean lives. The U.S. can’t do that alone. It can tempt Kim by promising an end to North Korea’s diplomatic and economic isolation. But it can’t fully reassure him that the United States—which turned on Qaddafi after he abandoned his own nuclear program—won’t do the same to him. Only Beijing—North Korea’s longtime ally—can do that. The more protected North Korea feels by China, the less it may feel the need to advance its nuclear program. The Naval War College’s Lyle Goldstein has suggested that Pyongyang might be more likely to permit inspection of its nuclear program if China takes part. This defies the logic of unipolarity, which mandates that the U.S. try to reduce China’s influence on the Korean peninsula. But here, too, America can better serve the cause of peace and human dignity by cooperating with great powers than seeking to supplant them.

What america needs from its foreign policy has not changed since the nation’s founding: to promote the external conditions that give Americans the best chance to become prosperous and free. What has changed, at key moments, is the strategy the United States pursues to realize those goals. In the early-19th century, via the Monroe Doctrine, the United States entered a de facto alliance with Britain—the world’s greatest naval power—to prevent Europe’s land powers from establishing beachheads in the Americas. Beginning in the early-20th century, as Britain’s ability to enforce the Monroe Doctrine waned, the United States entered two European wars, and then fought the Cold War, to prevent adversaries from dominating Europe and Asia.

Now, to achieve its enduring goals, America needs to change strategy once again. The unipolar strategy that America has pursued since the Soviet Union’s demise—of preserving if not extending American dominance in every region of the world—is increasingly insolvent. It is insolvent because America lacks the power to quell uprisings in the countries it has invaded. It is insolvent because America lacks the power to deny Russian influence over the countries on its border. It is insolvent because America lacks the power to enforce a status quo in East Asia established when China’s economy was slightly larger than Holland’s. And, above all, it is insolvent because it lacks support from the American people, who for good reason largely do not believe it has served their needs.

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

#### Retrenchment is stabilizing.

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

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

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

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

Conflict and US Military Spending

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

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

### !D---AT: Populism

#### Populists don’t stop biden

#### 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

### 1NC---Modelling

#### 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.

#### Gerber has one line about modelling and it’s about developing post-socialist states

David J. Gerber 13. Teaches antitrust law, comparative law and more specialized seminars such as international and comparative competition law. He has been a member of the Chicago-Kent faculty since 1982. After graduating from the University of Chicago Law School, Professor Gerber practiced law in New York City and then spent several years working in a German law firm and in several universities in Europe. “U.S. ANTITRUST: FROM SHOT IN THE DARK TO GLOBAL LEADERSHIP” Then & Now: Stories of Law and Progress. 2013.

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.

#### Marella says Phillipenes looks to Foreign Jurisdictions broadly

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.

### 1NC---!D---Nuclear Terrorism

#### 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 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

## Advantage 3

### 1NC---!D---Democracy

#### 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.”

#### 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.

### 1NC---Resilient---US Democracy

#### 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

## CP—Regs

### Top

#### Doesn’t say uses more RESOURCES

Daniel Crane 18. Frederick Paul Furth Professor of Law, University of Michigan. “Antitrust's Unconventional Politics.” *Virginia Law Review* (104): 134-135. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3019&context=articles>.

Beyond the concern that, absent antitrust, capitalism itself might succumb to reformist pressures, there is a more modest possibility that, absent antitrust, political pressures would lead to overregulation. Antitrust and administrative regulation are conventionally viewed as alternatives to address market failures. From the Reagan Administration to the Financial Crisis of 2008, the overall arc of American law involved simultaneous deregulation and relaxation of antitrust enforcement. If popular dissatisfaction with the economic status quo grows, demand might grow to pull either the regulatory or antitrust lever. Those ideologically committed to a light governmental hand on the market might prefer the antitrust alternative.

It is hard to judge at any given moment how much political support for antitrust intervention is motivated by genuine concern over monopoly and competition, and how much of it derives from the fact that, in the face of popular demand for a governmental cure to a perceived evil, it is often easier to delegate the solution to antitrust than to propose a regulatory solution. From the Sherman Act forward, however, it is certain that antitrust has often been deployed as a foil to more interventionist forms of regulation. The ideological and political implications of that move are complex and not neatly housed in left– right categories.

### 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.

### AT benefits fail

#### Benefits Fails---substitutes government judgement and defies market logic.

Suresh Naidu and Eric Posner 20. Professor of Economics and International and Public Affairs, Columbia University. Kirkland and Ellis Distinguished Service Professor of Law, University of Chicago. “Antitrust-Plus: Evaluating Additional Policies to Tackle Labor Monopsony.” *Roosevelt Institute* May 2020: 15-16. <https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_LaborMonopsonyandtheLimitsoftheLaw_Report_202004.pdf>.

Workers are protected by a range of laws that require employers to offer certain benefits to them. Federal mandates include workers compensation, safety and health requirements, family and medical leave requirements, and special treatments for veterans.6 States also impose mandates. Illinois, for example, requires employers to give workers time for a meal if they continuously work 7.5 hours or more, and prohibits employers from penalizing employees who miss work in order to vote or serve on a jury.7 Mandates can be loosely defined as legally required in-kind transfers from the employer to the workers where the workers attach or may attach an intrinsic value to the benefit. We abstract away from certain legal requirements that are designed to increase workers’ bargaining power, for example, union organization rights.

These policies have often puzzled economists because they seem to substitute the government’s judgment about the conditions of employment for the employee’s own judgment as to what may be best for her. Consider, for example, a mandate that employers grant unpaid leave to workers who experience a family medical emergency. It would seem that if workers value unpaid leave of this type a sufficient amount, employers would grant it to them even in the absence of the mandate. The unpaid leave is simply an in-kind benefit—effectively, a kind of weak employer-supplied insurance policy. Suppose, for example, that a worker would be willing to pay $100 for such a policy because it gives her peace of mind, while the cost to the employer is only, say, $50 in lost productivity. By incorporating unpaid leave into the employment contract, the employer should be able to reduce the wage by between $50 and $100. As Summers observes (1989), mandates might be justified where externalities are present, or for paternalistic reasons, but otherwise they are a puzzle.

The logic is the same if the employer is a labor monopsonist. Indeed, it is possible that the labor monopsonist has stronger incentives than a non-monopsonist to offer benefits because the monoposonist will obtain a larger share of the surplus. Spence’s (1975) model may apply to the labor market, so employers offer higher non-wage benefits to attract the marginal worker, but also depress wages more for the inframarginal workers.8 As Summers also notes (1989, p. 170 n.2), the story is more complex if, as will usually be the case, the monopsonist has limited information about employees and potential hires. Employers may use packages of wages and benefits to avoid adverse selection problems but that are, from the social standpoint, inefficient. But a policy of mandating benefits in such circumstances does not have straightforward efficiency effects.

Further, to the extent that the cost of benefits is larger than the value workers have for those benefits, mandates will act as a tax, and thus magnify the monopsony distortion, resulting in even lower employment and wages than the competitive case. We suspect that mandates will not generally help address labor monopsony power except in the limited case where the minimum wage is binding, and so the addition of a mandate has the effect of increasing the effective compensation of a low-income worker. Even here, however, raising the minimum wage would be the better remedy to the problem of labor monopsony. Mandates do not address wage suppression caused by monopsony power.

Solved by CP fiat and antitrust is worse:

#### Regulation more effectively addresses market failures

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

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

Start FN 3

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

End FN 3

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

Start FN 4

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

End FN 4

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

#### Antitrust enforcement fails on all accounts

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 professed efficiency basis of competition policy has not gone unchallenged (Lande, 1982; DiLorenzo and High, 1988). What is more important, faith in the efficacy of the antitrust laws to deliver net social gains ignores the political pressures that impinge on the agencies created to enforce them, pressures marshaled by groups perceiving opportunities to exploit antitrust processes strategically, not to promote competition, but to subvert it (Baumol and Ordover, 1985). A law that declares mergers to be illegal where their effect ‘‘may be to substantially lessen competition or tend to create a monopoly’’ is also a law that affords the merger partners’ rivals the opportunity to block a transaction that promises to create a larger, more efficient competitor. A law that makes it illegal for a firm to charge different prices to different customers not justified by differences in the cost of serving them is also a law that affords rivals the opportunity to seek relief from prices that are ‘‘predatorily’’ low. The Robinson–Patman Act was in fact drafted and passed in response to the political influence mobilized by independent grocers, druggists and other small retailers, who complained loudly that, under the Clayton Act’s original language, the FTC was either unable or unwilling to prevent the emerging national chain stores from using their mass buying power to sell goods to consumers at prices below those charged by the independents (Ross, 1984). Observers of the antitrust enforcement process have long been critical of individual applications of it (for recent surveys of the case-study literature, see Armentano, 1990; Rubin, 1995). A typical antitrust case study finds that the evidence presented in behalf of the plaintiff was ‘‘weak and at times bordered on fiction’’ and that ‘‘neither the government nor the Courts seemed able to distinguish between competition and monopolizing’’ (Peterman, 1975, p. 143). Even when the law conceivably has struck at acts and practices that resulted in injury to consumers, the effectiveness of the penalties imposed on guilty defendants has been called into question (Elzinga, 1969; Rogowsky, 1986, 1987). Systematic empirical studies of the antitrust case-selection process have produced no support for the hypothesis that the process is guided by social-welfare criteria (Long et al., 1973; Asch, 1975; Siegfried, 1975) or that antitrust law enforcement has had measurable pro-competitive effects on the behavior of firms (Stigler, 1966; Asch and Seneca, 1976; Shaw and Simpson, 1986; Sproul, 1993).

#### 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.

## Ad1

#### Finishing 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.

#### 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

## Ad2

#### So does ASEAN

Searight et al 17- Dr. Amy Searight is a senior adviser and director of the Southeast Asia Program at the Center for Strategic and International Studies (CSIS) in Washington, D.C. Murray Hiebert is senior adviser and deputy director of the CSIS Southeast Asia Program. Geoffrey Hartman is a fellow with the CSIS Southeast Asia Program. (Amy Searight, Murray Hiebert, Geoffey Hartman, 2/10/17, “Six Guidelines for the Trump Administration to Continue Engagement in Southeast Asia” <https://medium.com/center-for-strategic-and-international-studies/six-guidelines-for-the-trump-administration-to-continue-engagement-in-southeast-asia-27441ec75e50#.cyh0umvkg>)

The size and diversity of ASEAN make it difficult to identify areas of cooperation that interest all members, but cooperation on core challenges like maritime security and counterterrorism appeals to most members, and to key U.S. partners in particular. Maritime security engagement is welcomed not only by South China Sea claimants, but also by ASEAN states concerned with piracy, illegal fishing, and energy security in their waters. U.S. security cooperation programs — such as the Foreign Military Financing program and the Pentagon’s new Southeast Asia Maritime Security Initiative — should continue to respond to this demand signal from the region. The administration should consider expanding these maritime security capacity-building initiatives and coordinating these efforts more closely with key allies like Japan and Australia.

Counterterrorism cooperation with Southeast Asia will also remain in demand. Engagement in this area is already robust after years of cooperation following 9/11, but the shifting nature of the extremist threat in Southeast Asia provides an impetus to refine existing cooperation and refocus efforts toward problem areas like deradicalization and the tracking of fighters returning from conflicts in the Middle East.

## Ad3

#### 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.

#### 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.

### 1NC---Election Thumper---Democracy

#### Election chaos and norm-breaking thump democracy.

McCoy 11/4, Foreign correspondent @ Washington Post. MA, international politics and journalism. Citing Thomas Carothers, a senior official at the Carnegie Endowment for International Peace, among others. (Terrence, 11/4/20, "Election cliffhanger captivates world, prompts fears for fate of U.S. democracy", *Washington Post*, https://www.washingtonpost.com/world/2020/11/04/world-reaction-us-election-2020/)

The world watched with a mixture of apprehension, dismay and fear on Wednesday as the United States struggled to extricate itself from a divisive presidential election and appeared to face a protracted legal battle. President Trump’s premature claim of victory and false allegations of voter fraud drew expressions of shock over the state of U.S. democracy, along with disparagement from U.S. adversaries. Here are the latest developments: International election observers found the vote was “competitive and well-managed” but also “tarnished by legal uncertainty,” in an initial assessment released Wednesday. They condemned Trump’s claims of voter fraud, calling them “baseless allegations.” Europeans expressed fear the situation in the United States could deteriorate rapidly. Whatever the outcome, analysts say, Trump’s strong performance indicates Trumpism is here to stay. Asian markets rose Thursday, with Tokyo’s Nikkei index up more than 1 percent and Hong Kong’s Hang Seng gaining almost 3 percent. What the U.S. election means for countries around the globe Trump’s victory claims and fraud complaints draw concern European media outlets questioned whether the United States was on the brink of collapse. China ridiculed the U.S. election as that of a “developing nation’s.” Germany’s defense minister warned of an “explosive situation,” even a “constitutional crisis.” A leading Brazilian newspaper prophesied that “more rounds of attacks on the foundations of democracy are guaranteed.” The headlines abroad aren’t expected to quiet anytime soon. After Trump falsely declared victory before the votes were counted on election night, he spent much of Wednesday leveling allegations of electoral fraud without evidence. His campaign has since announced legal challenges to determine which votes will count. Days of court battles and political uncertainty lie ahead. Many fear violence. “It highlights this fissure in America, and it troubles the parts of the world that would like to see American democracy succeed,” said Thomas Carothers, a senior official at the Carnegie Endowment for International Peace. “The image of American democracy has taken a series of body blows in the last few years, and this election probably only increases them.” Despite the uncertainty, Asian markets rose Thursday, with Tokyo’s Nikkei up more than 1 percent and Hong Kong’s Hang Seng gaining almost 3 percent by early afternoon local time. That followed a good day on Wall Street. Some analysts said the gridlock on taxes and regulation in Washington that would come with a President Biden and a Republican Senate was actually buttressing stocks. “Equity markets have now decided they like the prospect of a ‘do nothing’ President,” Ray Attrill, head of FX Strategy at National Australia Bank, told Reuters. Countries that have long struggled with democracy have begun to see their own political woes reflected in the United States. “In Africa, that’s nothing new,” said Oliver Dickson, a radio broadcaster in Johannesburg. “Election rigging — essentially what Trump is doing — is a long-standing practice over here. When a democracy is being hijacked, only its institutions can rescue it.” The democratic process in the United States has never been flawless; it has long been marred by problems with campaign finance, gerrymandering and toxic polarization. But never has an incumbent president been perceived as so pointedly trying to undermine the process itself. In rhetoric and action, President Trump has sought to erode people’s faith in the integrity of the results. “It’s breaking apart the image of America,” said Robin Niblett, the director of Chatham House in London. “It’s puncturing that vision.” The Organization for Security and Cooperation in Europe assailed Trump on Wednesday for his claims of electoral fraud and his calls to halt the vote in areas where it appeared to be turning against him. Challenging times for democratic values worldwide “Nobody — no politician, no elected official, nobody — should limit the people’s right to vote,” said Michael Georg Link, a senior official with the organization. “Baseless allegations of systematic deficiencies, notably by the incumbent president, including on election night, harm public trust in democratic institutions.”

The tumult in the United States is unfolding as democratic values around the globe are fraying. The Pew Research Center this year found mixed opinions about democratic ideals across 34 countries surveyed. Far fewer people in India and Israel said they believed freedom of speech was important than five years earlier. Freedom House reported in March that democracy has been in decline for 14 years in a row. Not only have authoritarian regimes in countries such as China and Russia become more entrenched, the Washington think tank found, but “establishment democracies” have backslid. The trend has accelerated during the coronavirus pandemic as leaders have seized wartime powers and delayed elections. “If the foundations of our democracy are threatened, it will have a detrimental effect for struggling democracies in other parts of the world,” said Sarah Repucci, the author of the Freedom House report. “People who are fighting for democracy in their own countries look to what’s happening in the United States, and it influences their sense of what’s possible. What happens here has an enormous influence on the fate of democracy abroad.” In Brazil, where President Jair Bolsonaro won the 2018 presidential election after mimicking many of Trump’s campaign tactics, political analysts said the U.S. election will likely convince strongman leaders that nationalist populism has enduring appeal and democratic norms can be swept aside without political cost. Trump administration has record of criticizing foreign governments that declare victory in disputed votes A Biden win could still be a 'success for Trump’ “Irrespective of who wins this thing, these results suggest that leaders worldwide who take their cues from Trump, including Bolsonaro, are now emboldened,” said Matias Spektor, a political scientist at the Getúlio Vargas Foundation in São Paulo. “That the U.S. electorate has not given Trump a major rebut suggest the market for everything he embodies is alive and kicking.” Gérard Araud, the former French ambassador to the United States, tweeted that Biden would probably prevail, “but paradoxically, I can’t help to consider this election as a success for Trump. After so many scandals and polemics, after the COVID disaster, after the George Floyd death and its aftermath, and with major media against him, it’s not so bad.” Stephen Bartholomeusz, a business columnist for the Sydney Morning Herald, wrote that Trump “is likely to remain a significant and destabilizing force in U.S. politics regardless of whether he continues to live in the White House, or is ejected.” In Europe, there was pervasive fear that the situation in the United States could deteriorate rapidly. “America looks into the abyss,” Spain’s El País said in a headline. Trump’s behavior was “common in authoritarian regimes,” France’s Le Monde editorialized.

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## Law Enforcement DA

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#### Turns democracy

Brinkman 11 – Henk-Jan Brinkman Chief of Policy, Planning and Application in the Peacebuilding Support Office of the United Nations and Cullen S. Hendrix, Assistant Professor at the The College of William & Mary and Fellow at the Robert S. Strauss Center for International Security and Law at the University of Texas at Austin, “Food Insecurity and Violent Conflict: Causes, Consequences, and Addressing the Challenges”, Occasional Paper n° 24, July, <http://ucanr.edu/blogs/food2025/blogfiles/14415.pdf>

Most of the types of political violence addressed here are more prevalent in societies with higher levels of chronic food insecurity. There is a correlation between food insecurity and political conflict in part because both are symptoms of low development (Collier et al., 2003). Nevertheless, a growing body of research makes both direct links and indirect links – as proxied by environmental scarcity or access to water resources – between food scarcity and various types of conflict. The causal arguments linking food insecurity to political violence lack microfoundational evidence – evidence based on actions of individuals – to explain how the mechanism works, but there are plenty of theories. The theories tend to rest either on the perspective of motivation, emphasizing the effect of food insecurity on economic and social grievances; or on the perspective of the opportunity cost, emphasizing the perceived costs and benefits of participating in violence relative to other means of securing income or food (Gurr, 1970; Tilly, 1978; Humphreys and Weinstein, 2008; Blattman and Miguel, 2010). These arguments are most valid with respect to participation in civil war and rebellion, where participation is better explained by a mixture of grievances – which provide motivation – and selective incentives – protection from violence and opportunities to engage in predation or to receive food, clothing, shelter and other material benefits – rather than grievances alone (Berman, 2009). A study of demobilized combatants in Sierra Leone found that poverty, lack of educational access and material rewards were associated with participation in the civil war (Humphreys and Weinstein, 2008). Interestingly, in Liberia, women were more likely than men to fight for material benefits (Hill et al., 2008). Thus, grievances are important, but so are motivations related to that individual’s economic and opportunistic considerations. Civil Conflict Civil conflict is the prevalent type of armed conflict in the world today (Harbom and Wallersteen, 2010). It is almost exclusively a phenomenon of countries with low levels of economic development and high levels of food insecurity. Sixty-five percent of the world’s food-insecure people live in seven countries: India, China, the Democratic Republic of Congo (DRC), Bangladesh, Indonesia, Pakistan and Ethiopia (FAO, 2010), of which all but China have experienced civil conflict in the past decade, with DRC, Ethiopia, India and Pakistan currently embroiled in civil conflicts. Pinstrup-Andersen and Shimokawa (2008) find that poor health and nutrition are associated with greater probability of civil conflict, though their findings are based on small sample sizes. Countries with lower per capita caloric intake are more prone to experience civil conflict, even accounting for their levels of economic development (Sobek and Boehmer, 2009). This relationship is stronger in those states where primary commodities make up a large proportion of their export profile. Some of the countries most plagued by conflict in the past 20 years are commodity-rich countries characterized by widespread hunger, such as Angola, DRC, Papua New Guinea and Sierra Leone. The mixture of hunger – which creates grievances – and the availability of valuable commodities – which can provide opportunities for rebel funding – is a volatile combination. World commodity prices can trigger conflict, as higher prices, especially for food, increase affected groups’ willingness to fight. Timothy Besley and Torsten Persson (2008) find that as a country’s import prices increase, thereby eroding real incomes, the risk of conflict increases. Oeindrila Dube and Juan F. Vargas (2008) arrive at similar conclusions when looking at Colombia, where higher export prices for coffee (which is labour intensive and a source of rural income) reduced violence in coffeeproducing areas while higher export prices for oil (which is capital intensive and a source of income for rebels and paramilitary groups) increased violence in regions with oil reserves and pipelines. Other research links transitory weather shocks to civil conflict. In these studies, weather shocks – like drought and excess rainfall – are thought to fuel conflict by causing crops to fail and reducing agricultural employment opportunities, thus increasing food insecurity both in terms of food availability and food access (ability to pay). The people most likely to participate in armed conflict – young men from rural areas with limited education and economic prospects – are likely to seek work in the agricultural sector. As that work dries up, fighting looks more attractive. However, the empirical link between transitory weather shocks and civil conflict is still ambiguous. Some studies find that civil conflict is more likely to begin following years of negative growth in rainfall (Miguel, Satyanath and Sergenti, 2004; Hendrix and Glaser, 2007), suggesting that drought and decreased agricultural productivity expand the pool of potential combatants and give rise to more broadly held grievances. However, approaches that look at levels of rainfall, rather than growth in rainfall from year to year, find tenuous, or in fact positive relationships, between rainfall abundance and the onset of conflict (Burke et al., 2009; Buhaug, 2010; Hendrix and Salehyan, 2010; Ciccone, forthcoming). Some case-based research, however, links drought to conflict – though mediated by the government’s response to the crisis. For example, during the Tuareg rebellion in northern Mali, drought – aggravated by the government’s embezzlement of drought relief supplies and food aid – was a significant source of grievance that motivated young men and women to take up arms (Benjaminsen, 2008). Recently, warmer temperatures have been linked to an increase in civil conflict, though this finding has been challenged (Burke et al., 2009; Buhaug, 2010). Civil war is also more likely in the aftermath of quick-onset natural disasters, such as earthquakes, major volcanic eruptions, floods, and cyclonic storms (Brancati, 2007; Nel and Righarts, 2008). The relationship between disaster and conflict is strongest in countries with high levels of inequality and slow economic growth; food insecurity and resource scarcity are among the more plausible explanations for this correlation. Interstate War The links between food insecurity and interstate war are less direct. While countries often go to war over territory, previous research has not focused directly on access to food or productive agricultural land as a major driver of conflict (Hensel, 2000). However, wars have been waged to reduce demographic pressures arising from the scarcity of arable land, the clearest examples being the move to acquire Lebensraum (“living space”) that motivated Nazi Germany’s aggression toward Poland and Eastern Europe (Hillgruber, 1981) and Japan’s invasion of China and Indochina (Natsios and Doley, 2009). Water, for drinking and for agriculture, is also a cause of conflict (Klare, 2002). Countries that share river basins are more likely to go to war than are other countries that border one another (Toset et al., 2000; Gleditsch et al., 2006). This relationship is strongest in countries with low levels of economic development. Institutions that manage conflicts over water and monitor and enforce agreements can significantly reduce the risk of war (Postel and Wolf, 2001). Jared Diamond (1997) has argued that for centuries military power was built on agricultural production. Zhang et al. (2007) show that long-term fluctuations in the prevalence of war followed cycles of temperature change over the period 1400–1900 CE, with more war during periods of relatively cooler temperatures and thus lower agricultural productivity and greater competition for resources. Similar findings linking cooler periods with more war have been established for Europe between 1000 and 1750 CE (Tol and Wagner, 2008). Democratic and Authoritarian Breakdowns Democratic breakdowns occur when leaders are deposed and replaced by officials who come to power without regard for elections, legal rules, and institutions. Not all breakdowns are violent – “bloodless” coups account for 67 percent of all coups and coup attempts – but many have been very bloody, and the autocratic regimes and instability that follow democratic breakdowns are more likely to lead to the abuse of human rights, in some cases leading to mass state killing (Poe and Tate, 1994; Harff, 2003). Food insecurity, proxied by low availability of calories for consumption per capita, makes democratic breakdown more likely, especially in higher-income countries, where people expect there to be larger social surpluses that could be invested to reduce food insecurity (Reenock, Bernhard and Sobek, 2007). Though statistical evidence is lacking, rising food prices have been implicated in the wave of demonstrations and transitions from authoritarian rule to fledgling democracy in some countries across North Africa and the Middle East in 2011. There are some historical precedents for this: a bad harvest in 1788 led to high food prices in France, which caused rioting and contributed to the French revolution in 1789; and the wave of political upheaval that swept Europe in 1848 was at least in part a response to food scarcity, coming after three below-average harvests across the continent (Berger and Spoerer 2001). Protest and Rioting Throughout history higher food prices have contributed to or triggered violent riots. Protests and rioting occurred in response to sharp increases in world food prices in the 1970s and 1980s (Walton and Seddon, 1994). Record-high world food prices triggered protest and violent rioting in 48 countries in 2007/08 (see Figure 1). The ratio of violent to non-violent protest was higher in low-income countries and in countries with lower government effectiveness (von Braun, 2008). Recent research links higher world food prices for the three main staple grains (wheat, rice and maize) to more numerous protests and riots in developing countries, though this relationship can be mitigated by policy interventions designed to shield consumers from higher prices (Arezki and Brückner, 2011; Bates, 2011). International market prices are not the only source of food-related protests. The lifting of government subsidies can lead to rioting as well. Until recently, the biggest demonstrations in modern Egyptian history were the three-day “bread riots” in 1977 that killed over 800 people, which were a response to the Egyptian government’s removal of state subsidies for basic foodstuffs, as mandated by the International Monetary Fund (IMF) (AFP, 2007). “IMF riots” can be traced to popular grievances over withdrawn food and energy subsidies (Walton and Seddon, 1994; Abouharb and Cingranelli, 2007). However, the relationship between “IMF riots” and food insecurity is more complicated. Generalized food and energy subsidies are regressive, meaning that wealthy and middle-class households generally capture more of the benefits. As such, it may be real income erosion, rather than acute food insecurity, that is driving participation in protest. Communal Violence Competition over scarce resources, particularly land and water, often causes or exacerbates communal conflict (Homer-Dixon, 1999; Kahl, 2006; Ban, 2007). Communal conflict involves groups with permanent or semi-permanent armed militias but does not involve the government. However, it can escalate to include government forces, as in the massacres in Darfur, Rwanda and Burundi. These conflicts have the potential to escalate to civil war when the government is perceived to be supporting, tacitly or otherwise, one communal group at the expense of the other (Kahl, 2006). While the conflict in Darfur began as a communal conflict over land and water, its impact escalated to devastating proportions following the government’s support for Janjaweed militias in their fight against the Sudan People's Liberation Army/Movement and Justice and Equality Movement rebels. Communal conflicts are common in the Sahel, the zone of transition between the Sahara desert and the savanna, particularly in years of extremely high and low rainfall (Hendrix and Salehyan, 2010). Recurrent, long-lasting droughts in the Sahel have undermined cooperative relationships between migratory herders and sedentary farmers, leading to food insecurity and increased competition for water and land between farmers and herders, but also within herding and farming groups. As a pastoralist in the Sudan noted: “When there is food, there is no cattle raiding.” (quoted in Schomerus and Allen, 2010). Once violence begins, conflict escalates and persists because of security dilemmas (fear of future attacks leads to preemptive attacks – see Posen, 1993) and lack of alternative dispute mechanisms between groups and effective policing within groups (Fearon and Laitin, 1996). These conflicts have been particularly lethal in Kenya, Nigeria, the Sudan and Uganda. Repeated clashes between Fulani herders and Tarok farmers in Nigeria’s Plateau State killed 843 people in 2004. Similar clashes between Rizeigat Abbala and Terjam herders in the Sudan killed 382 in 2007. Cattle raiding in the Karamoja Cluster, a cross-border region of Ethiopian, Kenyan and Ugandan territory, resulted in more than 600 deaths and the loss of 40,000 heads of livestock in 2004 alone (Meier, Bond and Bond, 2007). These conflicts tend to occur in politically marginalized territories far from the capital (Raleigh, 2010). Context Matters: Demographic, Social, Political, and Economic Mediators Food insecurity is a clear contributor to political instability and conflict. But neither hunger nor conflict exist in a vacuum: other aspects of the political, economic and social environment affect the degree to which food insecurity, and grievances more generally, are expressed violently (Tilly, 1978).

#### Outweighs on timeframe

FA 20 (Farm Aid, “Understanding the Economic Crisis Family Farms are Facing,” <https://www.farmaid.org/blog/fact-sheet/understanding-economic-crisis-family-farms-are-facing/>)

Faced with multiple years of losses that have whittled away equity, many farmers are making hard choices. Many are selling off land, livestock or equipment in an effort to hold on. Others are finding off-farm jobs to supplement farm income, only to see those jobs go away. Some farmers are choosing to retire early, while others are declaring bankruptcy in an effort to keep their farm. These tough choices are raising concerns that we are on the cusp of a slow but huge wave of farm losses not seen since the 1980s. Chapter 12 bankruptcy was created during the 1980s Farm Crisis specifically for family farmers and fisherman and offers one indicator of extreme stress in the farm sector. Because most farmers who are in crisis do not end up filing a Chapter 12, bankruptcy data is really just the tip of the iceberg that contains much larger number of farms in crisis. By June 2020, Chapter 12 bankruptcy filings totaled 580, representing an 8% rise from June 2019 levels.[25] The largest increases in bankruptcies came from the Midwest (23%), Northwest (70%) and Southeast (22%), with more than half of filings occurring in the Midwest alone over the last year. Wisconsin, the country’s second largest dairy state, had the country’s highest number of Chapter 12 filings (69) between July 2019 and June 2020, followed by Nebraska (38), Georgia (36), Minnesota (36), Iowa (33) and Kansas (32). In total, 23 states saw bankruptcy filings rise over the last 12 months, with the biggest increases occurring in Wisconsin, Oregon and Iowa.[26]

### AT: Plan DOJ

#### Spills over between antitrust agency.

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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.

### U+IL---Enforcement High, Resources Key

#### 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 high, but requires significant resources---new demands require cuts elsewhere

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/>)

Antitrust enforcement vis-a-vis horizontal transactions among health care providers or payers is active, although enforcers do not have sufficient resources to be as active as needed. In the past few years, the DOJ, together with state plaintiffs, successfully blocked two proposed mega-mergers of large health insurers. In the past decade, the FTC and DOJ have successfully challenged over a dozen hospital mergers and a number of mergers among other health care providers, including matters settled with consent decrees requiring divestitures to preserve competition and matters the parties abandoned in the face of agency opposition. 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.

### AT: O-stretch inev

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

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

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

### L

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

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

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

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

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

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

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

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

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

#### 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

#### Antitrust lawsuits are resource-consuming---they trade off with each other

**Mcgill, 19**, technology reporter for POLITICO Pro, (Margaret Harding , “Why breaking up Facebook won't be easy,” *POLITICO*, <https://www.politico.com/story/2019/05/27/breaking-up-facebook-antittrust-1446087>)

3) Antitrust cases take time and money The Justice Department’s antitrust lawsuit against AT&T, and its unsuccessful battle to break up Microsoft, were yearslong affairs that started under one presidential administration and ended in another. That means whoever wins the White House in 2020 could well be out of office before a potential case against Facebook is decided or settled. The AT&T case began in 1974 and ended in 1982, after which the government spent another two years implementing an agreement that split up the company into eight smaller entities. The government spent another decade in the 1990s and early 2000s waging an antitrust war against Microsoft for anti-competitive behavior, arguing that its operating system and internet browser should be separated. But by the time the court approved a settlement in 2002, requiring changes to the company's business practices but leaving Microsoft intact, the penalties did not have much impact, Verveer said. “Technology will change, business models will change, consumer preferences will change,” he said. “You could end up at the end of a long process with something that frankly doesn't make very much difference because the world has moved on.” That's one reason some Facebook critics, including former DOJ antitrust official Gene Kimmelman, argue that imposing restrictions on how social media companies use data could be a more effective strategy than breaking them up. A lengthy lawsuit against Facebook would also consume a lot of resources at the DOJ, which might have to hire outside attorneys and other experts as it did in the Microsoft case. The expense could even require additional appropriations from Congress, Schwartzman said. “It is a really daunting enterprise,” Schwartzman said. “The likelihood the Justice Department or Federal Trade Commission would be able to undertake such an activity is remote.”

### AT: Oil/Gas

#### Speculative, says they are developing new legal theories, but no ev says they are bringing cases which is the link.

Justin **Sink and** David McLaughlin 8/30/21. Staff writer for the Hill and Bloomberg writer. “FTC Targets Oil-and-Gas Deals, Franchises Amid Pain At Pump.” https://www.yahoo.com/now/ftc-targets-oil-gas-mergers-134500600.html

The Federal Trade Commission is examining ways to crack down on mergers in the oil and gas industry and investigate whether gas station franchises are driving up gas prices as part of a Biden administration effort to combat higher costs at the pump.

FTC Chair Lina Khan is directing staff to identify new legal theories to challenge retail fuel station deals and investigate possible collusion by national chains to push up prices, she said in an Aug. 25 letter to White House economic adviser Brian Deese obtained by Bloomberg News.

“I will be taking steps to deter unlawful mergers in the oil and gas industry,” Khan said. “Over the last few decades, retail fuel station chains have repeatedly proposed illegal mergers, suggesting that the agency’s approach has not deterred firms from proposing anticompetitive transactions in the first place.”

The FTC is planning to ratchet up investigations into abuses in the retail fuel station franchise market, she added.

#### It's easily overturned and courts aren’t receptive.

Restuccia and Schlesinger 7-9, White House reporter; Washington Correspondent @ the Wall Street Journal (Andrew and Jacob, 7-9-2021, "Biden’s Business Order Shows How He’s Using Executive Power to Shape Economy ", *WSJ*, https://www.wsj.com/articles/bidens-business-order-shows-how-hes-using-executive-power-to-shape-economy-11625856377?mod=series\_bidenexecorder)

Mr. Biden’s directives won’t take effect right away because he is urging federal agencies to issue rules or make other policy changes, which can take months. If they are implemented, there are other limitations: executive orders can be overturned by future presidents and regulations can be unwound over time. Legislation enacted by Congress is much more difficult to undo. “Executive orders can be initiated with the stroke of a pen, but they can also be overturned just as easily,” said Susan Dudley, a senior White House regulatory official during the George W. Bush administration. That can add volatility to economic policy-making. “That makes it very difficult for businesses to plan, if agencies are just going to be reversing decisions every four or eight years,” said Mr. Bosch. “It’s not a steady course of policy.” White House press secretary Jen Psaki said Friday she wouldn’t rule out the possibility of legislative discussions with Congress in the future, but she said Mr. Biden wanted to take action that would quickly have an impact. Many of the policies ultimately implemented in response to the order will likely face legal challenges from affected businesses. Those cases will be heard in a court system that was filled over the past four years by the Trump administration with judges known for skepticism about aggressive regulatory action.

#### Congress is key – Trump XOs prove.

McCabe and Tankersly 7-9, tech & WH correspondents @ the NYT (David and Jim, 7-9-2021, “Biden Urges More Scrutiny of Big Businesses, Such as Tech Giants”, *New York Times*, https://www.nytimes.com/2021/07/09/business/biden-big-business-executive-order.html)

But Mr. Biden may find it difficult to address the decline in competition across diverse parts of the economy — including Silicon Valley, Wall Street, chain restaurants and large hospital networks — solely through executive action. Experts warn that in many areas, the president will need to work with Congress to change federal laws if he hopes to have more success than former President Donald J. Trump, who also issued competition-focused executive orders and who saw limited results from them.

### Thumper---T/L

#### It’s hollow – the FTC is too busy, has resource shortages and enforcement efforts are having a reverse effect.

Lachapelle 8-26-21, Tara Lachapelle is a Bloomberg Opinion columnist covering the business of entertainment and telecommunications, as well as broader deals. She previously wrote an M&A column for Bloomberg News. (Tara, 8-26-2021, "Wall Street Is Ready To Put Lina Khan’s FTC To The Test", Washington Post, https://www.washingtonpost.com/business/wall-street-is-ready-to-put-lina-khans-ftc-to-the-test/2021/08/25/cb55d2c2-059c-11ec-b3c4-c462b1edcfc8\_story.html)

An overburdened U.S. Federal Trade Commission is warning acquirers that if they get impatient and close any deals without the agency’s permission, it just might slap them with a lawsuit. Dealmakers won’t hold their breath.

As President Joe Biden pushes for more aggressive antitrust enforcement — an effort spearheaded by legal scholar Lina Khan, his controversial pick to lead the FTC — the agency is running up against practical limitations. It’s working with very limited resources for a very large number of deals. How large? So far this year, nearly 10,000 U.S. companies agreed to be acquired for a combined deal value of $1.25 trillion, data compiled by Bloomberg show. That’s already surpassed last year’s sum and may even be on track for a record. Not all of those tie-ups will require regulatory approval but in July alone, 343 transactions filed premerger notifications and are awaiting review, compared with 112 in July 2020, according to the FTC.

Chart, bar chart

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These filings start a 30-day clock for regulators to decide whether to further investigate a deal. If that waiting period expires without any action, a company would typically take that to mean that it’s free to complete the transaction. But now the FTC says it can’t get to its backlog fast enough and that inaction on its part doesn’t signal permission to proceed. In warning letters sent to filers this month, the agency said companies that go ahead anyway do so at their own risk because the FTC might later decide a deal violates antitrust laws and sue to undo it — and what a mess that would create for buyers and sellers. And yet, if the agency thought such an aggressive move might discourage mergers, it was wrong.

“To my mind, it is a completely hollow threat and makes the agency look weak,” Joel Mitnick, a partner in the antitrust and global litigation groups at law firm Cadwalader, Wickersham & Taft LLP, said in a phone interview. “They’re saying they’re going to ignore the statutory time limits on them whenever they feel like it and continue to investigate transactions until they’re satisfied. But it’s very difficult for the agency to sue to unwind the transaction once the eggs are scrambled.”