## 1NC

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#### Anti-trust reform is based in free market logics of upholding competition which strengthens free enterprise and saves capitalism.

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Antitrust laws have historically been associated with countries that possess a free-market capitalist economy, which is understood as an economic system in which competition and the market forces of demand and supply determine economic outcomes. This historical association between capitalism and antitrust laws is evident from the fact that the countries that first adopted national antitrust laws, such as Canada, the United States, and the countries of Western Europe, are countries that have long embraced a market economy. On the contrary, the statist economies of the erstwhile Soviet bloc and many developing countries, for the most part, did not institute antitrust laws of the type associated with free market economies.

Notwithstanding these country examples, which indicate a positive association between a capitalist economic system and antitrust laws, there exist arguments that both support and oppose antitrust laws for a capitalist economy. Arguments in support of antitrust laws for a capitalist economy begin with the fundamental understanding that the most important ingredient of a capitalist system is market competition. The presence of a competitive market is vital to achieving the efficiency levels that a capitalist economy seeks. Therefore, competitive forces need to be protected to discipline the market players, especially the dominant ones. By preventing and punishing anticompetitive practices by market players, an antitrust law protects and promotes market competition. 1

In the United States, which is commonly understood to be the leading bastion of free-market capitalism and one of the first countries to enact an antitrust law, the role of antitrust legislation in preserving the capitalist character of its economic system is underscored by the near-constitutional status accorded to its antitrust statues by the U.S. Supreme Court. 2 The Court described these statutes as “the Magna Carta of free enterprise” and “as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”3 Such a sentiment is appropriate, given that the American antitrust law, the Sherman Act, was passed in 1890 to protect economic competition from rapidly-growing “trusts.”4

While the social and political zeitgeist has changed considerably since the passing of the Sherman Act, the fact remains that antitrust is perceived as key to “protecting consumers against anticompetitive conduct that raises prices, reduces output, and hinders innovation and economic growth.”5 Moreover, it is understood that “competition is a public good, and society cannot expect the victims of anticompetitive conduct to protect themselves.”6 The implication therefore is that government power, through the enforcement of antitrust statutes, is critical to reining in corporate power in order to protect economic competition and capitalism.

#### Capitalism causes existential climate change, nuclear war, democratic collapse, extreme inequality, and perpetual exploitation of the global south — try or die for a transition.

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

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war.

To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3

Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7

The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13

Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15

In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18

At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21

More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet.

Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23

The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers.

Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27

War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29

Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30

More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35

The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38

If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40

Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

#### The alternative is to reject the aff and critically interrogate the neoliberal discourse of the 1AC — resisting capitalist pedagogy in educational spaces is the first step towards a broader movement away from Capitalism; COVID provides a unique transition opportunity.

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As educators, it is crucial for us to examine how we talk, teach, and write about inequality as an object of critique in an age of precarity, uncertainty and the current pandemic crisis. This is especially true at a time when a growing number of authoritarian regimes around the globe substitute replace thoughtful dialogue and critical engagement with the suppression of dissent and a culture of forgetting r. How do we situate our analysis of education as part of a broader discourse and mode of analysis that interrogates the promises, ideals, and claims of a substantive democracy? How do we fight against iniquitous relations of power and wealth that empty power of its emancipatory possibilities, and as Hannah Arendt has argued, “makes most people superfluous as human beings”? How might we understand how neoliberal ideology, with its appropriation of market-based values, regressive notions of freedom and agency, uses language to infiltrate daily life? How does a pandemic pedagogy in the service of neoliberalism produce identities defined by market values, and normalize a notion of responsibility and individuality that convinces people that whatever problem they face they have no one to blame but themselves? Repeated endlessly on right-wing media platforms, the underlying conditions that disproportionately produce chronic illness among poor people of color disappear among a public distracted, if not persuaded, by a pandemic pedagogy that celebrates unchecked self-interest, disdains social responsibility, and turns away from the reality of a society with deep-seated institutional rot and unravelling of social connections and the social contract.

Pandemic pedagogy thrives on inequality and becomes a militarized and heartless normalizing tool to convince the broader public that the lives of the elderly, sick, and vulnerable should be valued according to how much they contribute to the economy. And if they are willing to die in order not to be a drain on the economy, all well and good. Nothing escapes the cruel logic of neoliberalism with its arrogance and hubris on full display as it bathes in the glow of right-wing populism, ultra-nationalism, and neofascism. Its accoutrements of dictatorship are everywhere and can be seen in the swagger of militia that storm state capitals, in police who punch and pepper spray protesters and push elderly men to the ground, and in military forces on the streets without badges reinforcing a climate of fear, repression, and unaccountability. There is more at work here than a lack of humanity on the part of the Trump administration. As the Irish journalist Fintan O’Toole observes, there is also the deepening grip of a culture of cruelty and dehumanization. He writes:

“As a society the American people are being habituated into accepting cruelty on a wide scale. Americans are being taught by Trump and his administration not to see other people as human beings whose lives are as important as their own. Once that line has been crossed – and it is not just Trump and the people around him, but many of Trump’s supporters as well – then we know where that all leads, what the ultimate destination is. There is no mystery about it. We know what happens when a government and its leaders dehumanize large numbers of people.”

Depoliticization and the Authoritarian Turn

Neoliberalism is not only an economic system, it is also an ideological apparatus that relentlessly attempts to structure consciousness, values, desires, and modes of identification in ways that align individuals with its governing structures. Central to this pedagogical project is the attempt to prevent individuals from translating private issues and troubles into broader systemic considerations. By doing this, it becomes difficult for individuals to grasp the historical, social, economic, and political forces at work in shaping a social order as a human activity deeply immersed in specific relations of power. Neoliberalism’s attempt to erase or rewrite historical and social forces makes it difficult for individuals to imagine alternative notions of society, with themselves as collective actors, or view their problems as more than the limitations of faulty character, moral failure, or a problem of personal responsibility. Reducing individuals to isolated, discrete, hermetically-sealed human beings whose lives are shaped only by notions of self-reliance and self-sufficiency is a pedagogical strategy that utterly depoliticizes people, leading them to believe that however a society is shaped, it is part of a natural order. President Trump echoed this “no alternative” narrative when asked about celebrities and rich people having special access to being tested for the coronavirus while few others had access. He replied, “Perhaps that’s been the story of life.”

This individualization of the social with its mounting privatization, gated communities, and social atomization undermines collective action, any viable notion of solidarity, and weakens the notion of global connectivity. The philosopher Byung-Chul Han has rightly argued that contemporary neoliberal society is shaped by a dysfunctional notion of solitude and hermitically-sealed notions of agency, all of which undermine the values and social connections vital to a democracy. He writes:

“Those subject to the neoliberal economy do not constitute a we that is capable of collective action. The mounting egoization and atomization of society is making the space for collective action shrink… The general collapse of the collective and the communal has engulfed it. Solidarity is vanishing. Privatization now reaches into the depths of the soul itself. The erosion of the communal is making all collective efforts more and more unlikely.”

This panoptical nature of hyper-individualism is more aligned with shared fears than shared responsibilities. Under such circumstances, trust and the notion that all life is related become difficult to grasp as the myopic language of private self-interest inures individuals to wider social problems such as extreme inequality. There is no understanding in this discourse of the damage fanatical entrepreneurialism does to our embodied collectivity. Nor is there any value attributed to the important responsibilities, social values, and notion of the common good that exceeds who we are as individuals, or how we have been shaped by diverse social forces in particular ways.

It should be clear that questions of economic and social justice cannot be addressed by a neoliberal pedagogy that enshrines self-interest and privatization while converting every social problem into individualized market solutions or regressive matters of personal responsibility. Under neoliberalism’s disimagination machine, individual responsibility is coupled with an ethos of greed, avarice, and personal gain. One consequence is the tearing up of social solidarities, public values, and an almost pathological disdain for democracy. This radical form of privatization is also a powerful force for the rise of fascist politics because it depoliticizes individuals, immerses them in the logic of social Darwinism, and makes them susceptible to the dehumanization of those considered a threat or disposable.

Just as the spread of the pandemic virus in the United States was not an innocent act of nature, neither is the rise and pervasive grip of inequality. What is clear is that neoliberal support for unbridled individualism has weakened democratic pressures and eroded democracy and equality as governing principles. Moreover, as a mode of public pedagogy, it has undercut social provisions, the social contract, and support for public goods such as education, public health, essential infrastructure, public transportation, and the most basic elements of the welfare state. As a form of pedagogical practice, neoliberalism has morphed into a form of pandemic pedagogy that sacrifices social needs and human life in the name of an economic rationality that values reviving economic growth over human rights. As a lived system of meaning and values, self-reliance and rugged individualism are the only categories available for shaping how individuals view themselves, and their relationship to others and to the planet. The individualization of everyone and the reduction of social problems to private troubles is paralleled by sanctioning a world marked by borders, walls, racism, hate, and a rejection of government intervention in the interest of the common good. Most importantly, neoliberal individualization personalizes power, creating a depoliticized subject whose only obligation as a citizen is defined by consuming and living in a world free from ethical and social responsibilities. In many ways, it does not just empty politics of any substance, it destroys its emancipatory prospects.

The neoliberal strategists use education not only to mask their abuses and the effects of their criminogenic policies, they also – in a time of crisis, when dissatisfaction of the masses might lead to chaos, revolts, and dangerous levels of resistance – move dangerously close to creating the conditions for a fascist politics. The noted theologian Frei Betto is right in stating that under such conditions, “…they cover up the causes of social ills and cover up their effects with ideologies that, by obscuring causes, fuel mood in the face of the effects. That’s why neoliberalism is now showing its authoritarian face – building walls that divide countries and ethnic groups, executive power over legislature and judiciary, disinformation about digital networks, the cult of the homeland, the brazen offensive against human rights.”

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

Overcoming Pandemic Pedagogy

The kind of societies that will emerge after the pandemic is up for grabs. In some cases, the crisis will give way to authoritarian regimes such as Chile, Hungary and Turkey, all of which have used the urgency of COVID-19 as an excuse to impose more state control and surveillance, squelch dissent, eliminate civil liberties and concentrate power in the hands of an authoritarian political class. As is well documented, history in a time of crisis also has the potential to change dominant ideologies, rethink the meaning of governance, and enlarge the sphere of justice and equality through a vision that fights for a more generous and inclusive politics. It is crucial to rethink the project of politics in order to imagine forms of resistance that are collective, inclusive and global, capable of producing new democratic arrangements for social life, more radical values and a “global economy which will no longer be at the mercy of market mechanisms.” This is a politics that must move beyond siloed identities and fractured political factions in order to build transnational solidarities in the service of an alternative radically democratic society. Making the pedagogical more political means challenging those forms of pandemic pedagogy that turn politics into theater, a favorite tactic of Trump. In this case, the performance works to suspend disbelief, hold power accountable and unravel one’s sense of critical agency. Pandemic pedagogy does more than undermine critical thinking and informed judgments, it dissolves the line between the truth and lies, fantasy and reality, and in doing so, destroys the foundation for understanding, engaging and promoting that social and economic justice. The endgame under the rubric of a pandemic pedagogy is not simply the destruction of the truth, but the elimination of democracy itself.

Central to developing an alternative democratic vision is development of a language that refuses to look away and be commodified. Such a language should be able to break through the continuity and consensus of common sense and appeals to the natural order of things. At stake here is the need to reclaim both critical and redemptive elements of a radical democracy in order to address the full spectrum of violence that structures institutions and everyday life in the United States. This is a language connected to the acquisition of civic literacy, and it demands a different regime of desires and identifications to enable us to move from “shock and stunned silence toward a coherent visceral speech, one as strong as the force that is charging at us.”

Of course, there is more at stake here than a struggle over meaning; there is also the struggle over power, over the need to create a formative culture that will produce informed critical agents who will fight for and contribute to a broad social movement that will translate meaning into a fierce struggle for economic, political and social justice. Agency in this sense must be connected to a notion of possibility and education in the service of radical change. Reimagining the future only becomes meaningful when it is rooted in a fierce struggle against the horrors and totalitarian practices of a pandemic pedagogy that falsely claims that it exists outside of history.

Václav Havel, the late Czech political dissident-turned-politician, once argued that politics follows culture, by which he meant that changing consciousness is the first step toward building mass movements of resistance. What is crucial here in the age of multiple crises is a thorough grasp of the notion that critical and engaged forms of agency are a product of emancipatory education. Moreover, at the heart of any viable notion of politics is the recognition that politics begins with attempts to change the way people think, act and feel with respect to both how they view themselves and their relations to others. There is more to agency than the neoliberal emphasis on the “empire of the self,” with its unchecked belief in the virtues of a form of self-interest that despises the bonds of sociality, solidarity and community.

The U.S. is in the midst of a political and pedagogical crisis. This is a crisis defined not only by a brutalizing racism and massive inequality, but also a constitutional crisis produced by a growing authoritarianism that has been in the making for some time. The recent attacks by the police on journalists, peaceful protesters and even elderly people marching for racial justice echoes the violence of the Brownshirts in the 1930s. Let’s stop the futile debate about whether or not the U.S. is in the midst of a fascist state and shift the register to the more serious question of how to resist it and restore a semblance of real democracy.

Under such circumstances, education should be viewed as central to politics, and it plays a crucial role in producing informed judgments, actions, morality and social responsibility at the forefront not only of agency, but politics itself. In this scenario, truth and politics mutually inform each other to erupt in a pedagogical awakening at the moment when the rules are broken. Taking risks becomes a necessity, self-reflection narrates its capacity for critically engaged agency and thinking the impossible is not an option, but a necessity. Without an informed and educated citizenry, democracy can lead to tyranny, even fascism.

Trump represents the malignant presence of a fascism that never dies and is ready to remerge at different times in different context in sometimes not-so-recognizable forms. The COVID-19 crisis and the pandemic of inequality and racism have revealed elements of a fascist politics that are more than abstractions. The struggle against a fascist politics is now visible in the rebellions taking place across the United States. While there are no political guarantees for a victory, there is a new sense that the future can be changed in the image of a just and sustainable society. There is a new energy for reform taking place in the aftermath of the killing of George Floyd. Massive protests for racial, economic and social justice are emerging all over the globe. As I have argued in The Terror of the Unforeseen, at stake here is the need for these protests to transition from a pedagogical moment and collective outburst of moral anger to a progressive international movement that is well organized and unified. Such a movement must build solidarity among different groups, imagine new forms of social life, make the impossible possible, and produce a revolutionary project in defense of equality, social justice and popular sovereignty. The racial, class, ecological and public health crisis facing the globe can only be understood as part of a comprehensive crisis of the totality. Immediate solutions such as defunding the police and improving community services are important, but they do not deal with the larger issue of eliminating a neoliberal system structured in massive racial and economic inequalities. David Harvey is right in arguing that the “immediate task is nothing more nor less than the self-conscious construction of a new political framework for approaching the question of inequality, through a deep and profound critique of our economic and social system.” This is a crisis in which different threads of oppression must be understood as part of the general crisis of capitalism. The various protests now evolving internationally at the popular level offer the promise of new global anti-fascist and anti-capitalist movements. In the current moment, democracy may be under a severe threat and appear frighteningly vulnerable, but with young people and others rising up across the globe — inspired, energized and marching in the streets — the future of a radical democracy is waiting to breathe again.

### 2

#### The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by expanding regulatory constraints on business practices by standard-essential patent owners if the standard setting organization fails to adopt and enforce rules prevent SEP holders from pricing technology unfairly and should pass the infrastructure bill.

#### 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.

#### Infrastructure is key to EV’s and broader climate policy

Nilsen 6-4-2021 (Ella, “The fastest way to get more people to buy electric vehicles,” *Vox*, <https://www.vox.com/22463219/electric-vehicles-charging-station-infrastructure>)

Whether the United States can get to net-zero emissions by 2050 hinges hugely on our love of cars: They’re the dominant mode of transportation in America — ridership on trains, buses, and other public transit pales in comparison. Other transportation options are limited, and cars are ingrained in American culture. This makes switching to electric vehicles an attractive way to decarbonize. But in order to encourage more people to buy electric vehicles (EVs), the US needs a better charging station infrastructure. That is a key part of President Joe Biden’s American Jobs Plan, which proposes spending $174 billion on EVs, a sum that would boost supply chains for automakers, help subsidize the cost of cars for American drivers, and dramatically scale up the number of public electric vehicle charging stations along the nation’s roadways. There are currently about 42,490 public charging EV stations in the US, counting Level 2 chargers (taking about an hour of charging for 10 to 20 miles of range), and DC Fast chargers (taking about 20 minutes of charging for 60 to 80 miles of range). In comparison, there are about 115,000 gas stations in the US, most of which have multiple pumps. Biden’s plan would increase the number of charging stations more than tenfold by establishing grant and incentive programs for state and local governments and private companies to build 500,000 charging stations around America’s highways and in hard-to-reach communities by the year 2030. With a number of US carmakers pledging to go totally electric by 2035, that buildout could make EV charging ports as ubiquitous as gas pumps. At the moment, there aren’t enough reliable charging stations to accommodate a sudden increase in EV usage. About 627,000 plug-in EVs were bought in 2019 and 2020, and demand is expected to increase — especially as carmakers phase out gas-powered cars. “We’re so much better off than we were even five years ago ... but we still have a huge gap,” a Biden administration official told Vox. “This is an essential piece of the shift to EVs and it’s not going to happen on its own.” Transitioning American car drivers to electric vehicles is a crucial piece of the Biden administration’s overall plan to get the United States on a path to net-zero emissions by 2050, as well as its more immediate goal of limiting catastrophic climate change by cutting greenhouse gas emissions by 50 to 52 percent relative to 2005 levels by 2030. The US is the second-largest greenhouse gas emitter, after China, and cars are a big part of that. Transportation emissions account for 29 percent of total US greenhouse gas emissions (more than the electricity sector and industry), and light-duty vehicles like cars account for the vast majority of transportation emissions — close to 60 percent, as of 2018. Getting EV charging stations to be as ubiquitous as gas stations would help change that, but it’s just one piece of the puzzle. Even more important is increasing the availability and access for home and work charging stations — where experts believe most people will ultimately charge their cars. “Home charging is the most important; that’s where the highest number of charging [stations] will be needed,” said Scott Hardman, a researcher studying hybrids and EVs at the University of California Davis Institute of Transportation Studies. “It’s the cheapest; it’s the most convenient.” In addition to building public charging stations, the Biden administration plans to propose expanding tax credits for private infrastructure for home EV chargers, giving people an incentive to install them. This is key, experts told me; making charging station access equitable — ensuring they are affordable and accessible — is as important as increasing the total number of charging stations. Both are doable but will take serious government investment. But as with the rest of Biden’s agenda, the fate of this proposed network of charging stations could hinge on the fate of bipartisan infrastructure negotiations and whether the president decides to pass his plan with only Democratic votes. A charging station is not the same as a gas station Because gas stations are the most common method of refueling cars in the United States, powering up electric vehicles might call to mind clusters of charging stations next to convenience stores next to a highway or road. But the two modes of powering up are fundamentally different. For one thing, driving into a gas station, filling up, and driving out typically takes just a few minutes. The fastest EV charging stations — like DC Fast — on the other hand, take up to 20 minutes to charge enough to power the vehicle to a 60- to 80-mile range. Some state and city planners and EV experts are working on putting charging stations outside of restaurants, grocery stores, and shops, so that people can go off and eat a meal or shop while their car is refueling. “Most charging, we would hope and expect, is happening while people are doing something else,” said Eric Wood, a research engineer at the National Renewable Energy Laboratory’s Center for Integrated Mobility Sciences. “The idea that charging is happening slowly can be convenient for the driver as well as the grid.” More rapid charging technology is being developed, but the vast majority of available public charging stations currently in the US are the more sluggish Level 2 chargers, which require far more time to get to a full charge. There are just 5,141 DC Fast chargers in the US, with big gaps in parts of the Midwest and Mountain West, according to the Energy Department’s map of charging stations. “If your battery’s down to 20 percent, you’re going to have to stay plugged in for hours and hours,” said Ellen Hughes-Cromwick, the former chief global economist at Ford Motor Company, now a senior resident fellow at Third Way. The lack of charging infrastructure can mean headaches for drivers going on road trips, who need to plan their route to hit available charging stations. An October 2020 poll from YouGov found that charging time, hassle of charging, and cost of charging at home were all top reasons buyers who were looking for a new car weren’t considering an electric vehicle. As climate expert and activist Bill McKibben recently found while on a road trip from Vermont to Boston, if you’re in need of some juice and another driver is already using a public charger, you could be in for a nerve-wracking drive home. “The plug was in use once more, so I swallowed hard, did a little math, and drove on, arriving home with red lights flashing on the dashboard and a display indicating that my range was down to two miles,” McKibben recently wrote in the New Yorker. Competition and congestion around EV charging stations has gotten particularly bad in cities like San Francisco, where there’s a growing number of electric car drivers. (The places with the highest density of charging stations per 100,000 people are Vermont, California, Colorado, Hawaii, and Washington, DC.) “In San Francisco, there’s a huge congestion problem, and there are simply not enough plugs for EVs in that metro area,” said Hughes-Cromwick. “There is congestion in areas where EV demand has flourished. If we don’t get going on this, we will have roadblocks, especially for longer trips.” Another complication is that some electric car companies like Tesla — frustrated at the lack of investment in EV charging stations — have built out their own networks of superchargers that are only compatible with their cars. So if a driver of a Chevy Bolt or Nissan Leaf is running low on battery and the only charger around is a Tesla, they’re out of luck. The White House official I spoke to told me that any federal investment in EV charging stations will require universal chargers that can work with the full range of electric vehicles on the market. “It’s been incredibly important for Tesla to have done that buildout, but we’re thinking about this investment as chargers that can support any vehicle,” the official said. “It’s very clear it needs to be accessible for any driver of an EV.” That accessibility — along with the sheer number the White House hopes will be built — ought to, in theory, eliminate lines and congestion around chargers, while also ensuring charging is affordable. One thing it won’t do is solve the problem of charging times, but charging companies are developing faster chargers, and the second part of the White House’s proposal hopes to address that issue as well. Home charging is really important The most common and easiest way to charge an electric car doesn’t necessarily happen alongside a roadway; an at-home charging station “ends up for a lot of Americans being the only place they’d need to charge on a regular basis,” said Wood. Home charging is especially convenient for people who primarily use their electric car for short trips around their town or city; especially if a car has a 200- to 300-mile range, that could get them a couple of days or weeks on a single charge. This is important because Americans do the vast majority of their driving for short trips: Nearly 77 percent of vehicles drove distances of 10 miles or less per trip, according to the 2017 National Household Travel Survey (the most recent available). In other words, it’s far more often that we’re driving home, to work, or to run an errand than going on a long road trip. Home charging may be the most convenient, but home charging is also typically relegated to higher-income people who can actually afford to charge from within their home. For lower-income people who don’t have a garage or a dedicated parking spot with easy access to a charger, the logistics of charging at home become much more complicated. Just as policymakers are figuring out how to make EVs cheaper, experts told me that any expansion of charging stations needs to focus on how to make home charging more equitable and accessible for middle- and lower-income people. One option is getting more charging stations on residential streets, powered by the same electrical lines for street lights. This was piloted in London in 2020, with a number of street lights converted. But this is a relatively small project, and it hasn’t been adopted widely yet in other countries. Another option is increasing the number of charging stations at people’s workplaces, giving them another place to charge while their car is parked for hours. “Everyone parks their car somewhere at night; that’s where we need to get the charging to,” said Hardman. “We have to be careful it’s not just the privileged households that get the lower running costs.” The Biden administration official told Vox that the president’s infrastructure plan is proposing an extended or expanded tax credit to expand private infrastructure like charging stations at home. “There’s an outsize public role for that infrastructure,” the official said. “You have to have a mix of home charging, workplace, and public.” Overall, Biden’s goal is to make EVs more attractive in large part by making charging more convenient. But it will take significant government investment for Biden’s desired 500,000-EV network to become a reality. Getting a bipartisan group of lawmakers — particularly in the Senate, where Democrats need 10 Republican votes to pass legislation under normal rules — to agree to spend nearly $200 billion on EVs won’t be easy, as prolonged infrastructure negotiations have shown. But the US will need to make this change in order to meet its climate commitments, and to decrease its contribution to climate change.

### 3

#### 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.

### 4

#### “Private sector” means all non-governmental persons or entities, including non-profits

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

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

#### TVA: any universally applied standard, like CWS (Consumer Welfare Standard)

Phillips 18, commissioner on the Federal Trade Commission (Noah J. Phillips, 11-1-2018, “Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” <https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_session_5_transcript_11-1-18_0.pdf>)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### The aff only applies to conduct in a specific segment of the private sector

#### Vote neg:

#### 1 ⁠— limits and ground ⁠— the number of potential subsets is infinite ⁠— any industry, production, single company, individuals could be included, which undermines clash; only big affs have link uniqueness

#### 2 ⁠— precision ⁠— has the intent to define, exclude, AND is in legislative context

### Solvency

#### No massive royalties or patent hold-ups---best data.

Barnett 19, Torrey H. Webb Professor of Law, Gould School of Law, University of Southern California. (Jonathan M., “Antitrust Overreach: Undoing Cooperative Standardization in the Digital Economy”, *25 Mich. Telecomm. & Tech. L. Rev. 163*, pg. 207-208, Available at: <https://repository.law.umich.edu/mttlr/vol25/iss2/2>)

A. “Depropertizing” Standard-Essential Patents

Agencies and courts have devoted substantial attention to the potential risk that holders of SEPs would be able to dictate “exorbitant” pricing or impose other access constraints on device manufacturers in the wireless communications markets. The dispersion of IP ownership interests naturally gives rise to concerns that the total licensing and transaction costs involved in assembling the IP package required to deploy a standard-dependent product will be so high (the so-called “royalty stack”) that prices for end-user products will move beyond the reach of most consumers as well as discourage entry into the market by manufacturers and other intermediate users.152 However plausible in theory, these arguments have not been supported by actual market performance.

**[Footnote 152]**

152. For the most well-known statement of this assertion, see Lemley & Shapiro, supra note 118. The same authors have made similar assertions together and separately in subsequent writings. See also Mark A. Lemley & Carl Shapiro, A Simple Approach to Setting Reasonable Royalties for Standard-Essential Patents, 28 BERKLEY TECH. L.J. 1135, 1149-50 (2013) [hereinafter Lemley & Shapiro, A Simple Approach]; A. Douglas Melamed & Carl Shapiro, How Antitrust Law Can Make FRAND Commitments More Effective, 127 YALE L. J. 2110, 2116 (2018).

**[End Footnote 152]**

Two key pieces of empirical evidence suggest that these scenarios should no longer be key areas of policy concern. First, empirical evidence shows that, adjusted for quality improvements, the prices of smartphones and other IT products that are dependent on SEPs have fallen both absolutely and relative to products that are not dependent on SEPs.153 Second, empirical studies of aggregate royalty burdens in the smartphone markets have found no evidence to support widely stated claims that device manufacturers are burdened by double-digit royalty rates154; rather, the best available evidence indicates that total royalty rates are typically in the low to mid-single digits.155 These findings are broadly consistent with general tendencies in the smartphone markets, which have exhibited remarkable rates of growth in output and market adoption156 and continuous entry into the device production market.157 These well-established tendencies are inconsistent with widespread assertions of endemic “patent hold-up” and “royalty stacking” that characterize the current international regulatory consensus.

#### No one would actually follow on the aff — courts take years, political will, Biden won’t, etc.

Hirsh 21 — Michael Hirsh (Senior Correspondent, Foreign Policy); “Big Talk on Big Tech—but Little Action;” Foreign Policy; April 6th, 2021; <https://foreignpolicy.com/2021/04/06/big-tech-regulation-facebook-google-amazon-us-eu/>

Problem is, that’s just about where the consensus ends. And even if you add more lawyers, antitrust cases move glacially, and federal judges are extremely cautious about punishing behavior deemed anti-competitive, especially in an era when antitrust experts disagree vehemently about remedies. Plus, now every case faces the prospect of being squelched by a very conservative Supreme Court.

Despite the documented actions of Facebook and other companies in crushing would-be competitors, there is also good reason for judicial caution. Consider the irony that Microsoft—itself the target of a major antitrust action a quarter century ago—now considers itself the aggrieved party in the recent Department of Justice case against Google, since it is trying to raise the profile of its Bing search engine, which has a meager 2.5 percent of the market. Or that Facebook’s own dominance may someday fall victim—without any help from government at all—to new blockchain technology that could allow users to run their own web services and applications. (Ironically, among the key innovators pushing for that are Zuckerberg’s old antagonists from Harvard University, Tyler and Cameron Winklevoss, who [famously claimed](https://www.forbes.com/sites/michaeldelcastillo/2021/04/05/revenge-of-the-winklevii-facebook-winklevoss-bitcoin-nft-billionaire-revenge/?sh=543f9e791572) that he stole the social network idea from them.) Even today, many antitrust experts say it’s probably a judicial and legislative bridge too far for the government to try to proactively promote competition in the tech world; let the markets take care of that instead.

But so changed is the political environment that U.S. President Joe Biden and some of his top regulators, such as Lina Khan, a Yale Law School wunderkind who was recently nominated to the FTC, might seek to break up the big tech firms. Biden, on the campaign trail, said that breaking up tech quasi-monopolies such as Facebook is “something we should take a really hard look at.”

That is almost certainly not going to happen: The political will simply isn’t there, even among many Democratic legislators influenced by Khan and other progressive thinkers.

“I don’t think Biden has the stomach for that,” said Herbert Hovenkamp, an antitrust expert at the University of Pennsylvania. The reason is simple: Today’s monopolistic abuses are quite unlike the monopoly power of old, when big cartels like John D. Rockefeller’s Standard Oil inflicted predatory high prices on consumers and political will was high to “bust trusts.” On the contrary: Most consumers love the fact that they can buy all kinds of inexpensive stuff on Amazon and have it delivered the next day, and that Facebook doesn’t charge them a cent, even as it makes a mint selling their private information to advertisers and market manipulators.

“The Democrats need to be cautious here,” Hovenkamp said. “Consumers are their constituency. And these companies are among the biggest producers of growth in the U.S. Biden certainly doesn’t want to ruin that.” Instead, the administration may well decide to focus more on smaller fish in other industries, as the FTC did last week by [challenging](https://www.barrons.com/articles/ftcs-challenge-of-illumina-is-a-boost-for-rivals-in-cancer-test-race-51617228262) Illumina’s $7 billion purchase of cancer test developer Grail. In a sign of how aggressive the FTC might be under Biden, it was the first time in decades that the commission sought to block a so-called vertical merger, alleging that ownership of Grail would incentivize Illumina, a gene-sequencing company, to raise the profile of its Bing search engine, which has a meager 2.5 percent of the market. Or that Facebook’s own dominance may someday fall victim—without any help from government at all—to new blockchain technology that could allow users to run their own web services and applications. (Ironically, among the key innovators pushing for that are Zuckerberg’s old antagonists from Harvard University, Tyler and Cameron Winklevoss, who famously claimed that he stole the social network idea from them.) Even today, many antitrust experts say it’s probably a judicial and legislative bridge too far for the government to try to proactively promote competition in the tech world; let the markets take care of that instead.

#### Courts circumvent—aff gets taken to court

Newman 19, University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division. (John, 4-5-2019, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", Atlantic, <https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/>)

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it. If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

### Cooperation

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

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

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

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

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

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

#### Global multilateral cooperation structurally fails---overwhelming data confirms - means harmonizing global standards fails

Robert J Lieber 14, Professor, Department of Government, Georgetown University, 2014, “The Rise of the BRICS and American primacy,” International Politics, Vol. 51, p. 137-154

Equally important, liberal internationalists and others tend to assume that international relations are a positive sum game (Keohane, 1984; Ruggie, 1993). Experiences with multilateralism and with regional international institutions are said to encourage cooperation. Transparency, reciprocity and habits of collaboration are seen as self-reinforcing. In order to achieve their own domestic needs for economic growth, countries find not only these experiences beneficial, but such cooperation spills over across related functions and issue areas. A generation ago, scholars writing and theorizing about regional integration in Western Europe defined this process as one of ‘spillover’. For liberal internationalists and globalists there is at least an implied analogy with that European experience despite the immense differences in geography, history and path dependence.5 That assumption has some basis in the areas of economics and trade, though the mercantilist and predatory behavior of China provides a serious contrary indicator. In the security realm, however, there is little reason for such an optimistic assumption. Cases in point include nuclear proliferation (North Korea, Iran), tensions in East Asia (China, Japan, Vietnam, South Korea, the Philippines, the East and South China Seas) and conflicts in the Middle East (Iran, Syria, Saudi Arabia, Qatar, Egypt, Lebanon, as well as Israel and the Palestinians). Nonetheless there are exceptions. Brazil has played a continuing role in UN Peacekeeping. It assigns nearly 2500 military and police personnel to those missions and has played a leading role in Haiti, where it has commanded the UN’s operation since 2004. It also has headed the maritime component of UNIFIL (Lebanon) since 2011. In addition, Turkey has participated actively in NATO-led peacekeeping missions in Bosnia (SFOR), Kosovo (KFOR), and Afghanistan (ISAF).

Skepticism about the BRICS and the momentum assumed by liberal internationalists has not been scarce.6 Realist scholars have understandably been critical of the assumptions underlying these approaches as well as of the foreign policy choices they imply. However, other scholars too have found increasing reason for criticism. For example, Barma et al (2013, p. 56) have recently observed that, ‘Instead of a gradual trend toward global problem solving punctuated by isolated failures, we have seen over the last several years essentially the opposite: stunningly few instances of international cooperation on significant issues’. Moreover, Patrick (2010, p. 44) of the Council on Foreign Relations has cautioned that, ‘The United States should be under no illusions about the ease of socializing rising nations. Emerging powers may be clamoring for greater global influence, but they often oppose the political and economic ground rules of the inherited Western liberal order, seek to transform existing multilateral arrangements, and shy away from assuming significant global responsibilities’. In this regard, Laidi has argued that despite their own heterogeneity, the BRICS actually share a common objective in opposing Western liberal internationalist narratives that run counter to traditional state sovereignty. Instead, they seek to protect their own prerogatives, independence of action and national autonomy in an increasingly interdependent world (Laidi, 2012, pp. 614–615).

### Telecommunications

#### 5G locks in warming and destroys the environment.

Curran 20, International Policy Institute Cybersecurity Fellow. (Claire, 1-30-2020, "What Will 5G Mean for the Environment?", *Henry M. Jackson School of International Studies*, https://jsis.washington.edu/news/what-will-5g-mean-for-the-environment/)

Beginning 2020, the fifth generation of wireless technology is expected to be widely implemented throughout the world. The new network, called 5G, promises to give faster speeds and a higher capacity for the use of more devices. However, while companies from countries such as the United States and China are competing to be the first to deliver 5G to the consumer, the environmental impacts of the new network are being overlooked. In a time when the environment is at its most delicate, overlooking these impacts is extremely risky for future generations.

The main environmental issues associated with the implementation of the 5G network come with the manufacturing of the many component parts of the 5G infrastructure. In addition, the proliferation of new devices that will use the 5G network that is tied to the acceleration of demand from consumers for new 5G-dependent devices will have serious environmental consequences.

The 5G network will inevitably cause a large increase in energy usage among consumers, which is already one of the main contributors to climate change. Additionally, the manufacturing and maintenance of the new technologies associated with 5G creates waste and uses important resources that have detrimental consequences for the environment. 5G networks use technology that has harmful effects on birds, which in turn has cascading effects through entire ecosystems. And, while 5G developers are seeking to create a network that has fewer environmental impacts than past networks, there is still room for improvement and the consequences of 5G should be considered before it is widely rolled out.

#### Aff can only hope to solve 18% of growth-based emissions — K outweighs.

Alexander, 15—lecturer at the Office for Environmental Programs, University of Melbourne (Samuel, *Sufficiency Economy* pg 109-110, dml)

There is one point deserving of further emphasis. In response to the problems of climate change and peak oil, many people naturally hold up renewable energy as the salvation of civilisation, arguing that all we need to do is transition to renewable energy and the problems of peak oil and climate change will be resolved. The problem is that it is highly doubtful that renewable energy will ever be able to sustain a growth-orientated, industrial civilisation. Although it may be technically feasible from an engineering perspective, the problems of intermittency and storage make renewable energy supply much more expensive and problematic than most analysts think (see Moriarty and Honnery, 2012; Trainer, 2013a; Trainer, 2013b). Even if electricity could be affordably supplied by renewables, electricity only constitutes about 18% of final energy consumption (IEA, 2012), meaning that there is still around 82% of energy to replace, including oil used for transport, pesticides, and plastics, etc. If we try to produce that remaining segment of energy with biofuels, the production of biofuels would compete with land for food production, a conflict that also seems to be already underway, despite the relatively low levels of biofuels production today (Timilsina, 2014). Biofuels also have a very low energy return on investment – between 1 and 3 (Murphy, 2014: 12), suggesting that they will never be able to sustain an industrial civilisation, as we know it today.

#### Qualcomm means America wins 5G— plan flips it by overhauling royalty calculations and causes mass tech transfers to China.

Gouré 19, \*Dan Gouré, Ph.D., is a vice president at the public-policy research think tank Lexington Institute. Goure has a background in the public sector and U.S. federal government, most recently serving as a member of the 2001 Department of Defense Transition Team; (November 22nd, 2019, “The FTC’s Suit Against Qualcomm Is a Serious Threat to National Security”, https://www.realcleardefense.com/articles/2019/11/22/the\_ftcs\_suit\_against\_qualcomm\_is\_a\_serious\_threat\_to\_national\_security\_114864.html)

The competition to be the first to invent the next global wireless standard, known as 5G, is of extraordinary importance not just to the U.S. economy, but to national security.

Today, the United States is in a head-to-head race with several countries, notably China and its state-backed industries, which view 5G as a must-win competition. In the United States, winning this race will depend almost entirely on the efforts of private companies.

The most prominent of these is Qualcomm, one of the nation’s premier communications technology companies. Given the stakes involved, the decision by the Federal Trade Commission (FTC) to file a complaint in federal district court charging Qualcomm, Inc., with monopolistic behavior seemed, to say the least, somewhat odd. Why would a federal district judge, ruling in favor of the FTC, impose draconian measures on Qualcomm that would fundamentally ~~cripple~~ undermine its position as America’s gold medal entry in the 5G race?

This is the leading technology of the near future. Fifth-generation cellular communications will use a new combination of hardware, software and frequencies to create networks significantly faster than previous generations. It [will be able](https://www.pcmag.com/article/345387/what-is-5g) to transmit more data 100 times faster than the current 4G system. It will enable the creation of the long-envisioned Internet of Things in which millions of sensors, devices and computers will work seamlessly to serve consumers.

5G has the promise to revolutionize our economy, society and military operations. For the United States, hundreds of billions of dollars and millions of jobs are at stake. For the U.S. military, operating a secure, low-latency 5G network will be essential to realizing operational concepts such as Distributed Lethality and Multi-Domain Command and Control.

[According](https://www.atlanticcouncil.org/content-series/strategic-insights-memos/recommendations-on-5g-and-national-security/) to retired Marine Corps Gen. James Jones, former National Security Advisor: “China’s aggressive attempt to subsidize the development of global 5G networks as a tool of Beijing’s geopolitical and economic power requires an urgent and robust, public- and private-sector response from the United States government, its allies, and partners to bring secure 5G technology to our allies.”

The Trump Administration has made U.S. leadership in the race to develop and deploy 5G technologies a priority for both economic and national security reasons. The 2017 [National Security Strategy](https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf) called for improving America’s digital infrastructure by deploying a secure 5G Internet capability nationwide. At a White House meeting earlier this year, the president [made the case](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-united-states-5g-deployment/) for U.S. preeminence in 5G:

“We cannot allow any other country to out-compete the United States in this powerful industry of the future. We are leading by so much in so many different industries of that type, and we just can’t let that happen. The race to 5G is a race America must win, and it’s a race, frankly, that our great companies are now involved in. We’ve given them the incentive they need. It’s a race that we will win.”

Qualcomm is so dominant that even its foreign competitors, such as Huawei, employ Qualcomm technology. In what some sources have [characterized](https://www.sandiegouniontribune.com/business/technology/story/2019-08-22/the-race-for-5g-and-what-you-need-to-know) as a new “arms race” for 5G, Qualcomm is this country’s ace in the hole.

Qualcomm is also a vital member of the U.S. defense industrial base. In 2018, the Committee on Foreign Investment in the U.S. rejected a proposal by a foreign company to acquire Qualcomm. The Committee argued that Qualcomm's status as a well-known, trusted, and technologically preeminent player in the U.S. telecoms market was important to national security.

[According](https://www.sec.gov/Archives/edgar/data/804328/000110465918015036/a18-7296_7ex99d1.htm) to Aimen Mir, deputy assistant secretary of the Treasury, a “reduction in Qualcomm’s long-term technological competitiveness and influence in standard setting would significantly impact U.S. national security. This is in large part because a weakening of Qualcomm’s position would leave an opening for China to expand its influence on the 5G standard-setting process.”

Despite the important role Qualcomm plays in securing the United States’ position as a global leader in wireless standards, in the waning days of the Obama Administration, the FTC filed a complaint against Qualcomm alleging it pursued anticompetitive policies to create and maintain a monopolistic position in cellular networking technologies. In a trial held earlier this year, a federal district court judge sided with the FTC. The judge [imposed](https://www.dailysignal.com/2019/06/24/antitrust-lawsuit-against-qualcomm-is-unjust-government-overreach/) a particularly harsh remedy, ordering Qualcomm to fundamentally alter its business model by abandoning the company’s long-standing methodology for calculating royalties for the use of its intellectual property. The order would essentially require the company to renegotiate its existing contracts with customers and to license its intellectual property to competitors, including Chinese companies.

This decision amounts to a forced technology transfer to Huawei and China – imposed by our own government. The Department of Justice asked the judge to hold a hearing on remedies that might protect U.S. interests, but the judge refused and instead issued the harmful order.

Qualcomm is appealing the decision, and in a rather remarkable turn of events, the Departments of Justice, Energy and Defense have all filed declarations with the court in support of Qualcomm’s request that the ruling be stayed pending the appeal. The Ninth Circuit Court of Appeals has granted the stay, but if the court ultimately upholds the lower court ruling, it would still fundamentally threaten U.S. national security. The decision would cede the growing 5G market to foreign entities, most notably China, handing them dominance on a silver platter.

Seeing the danger, Ellen Lord, Undersecretary of Defense for Acquisition and Sustainment, filed a [declaration](https://islidedocs.com/philosophy-of-money.html?utm_source=decl-of-under-sec-of-defense-ellen-lord) to the court: “DoD firmly believes that any measure that inappropriately limits Qualcomm's technological leadership, ability to invest in research and development (R&D), and market competitiveness, even in the short-term, could harm national security.”

Thanks to overzealous regulators and a compliant judge, U.S. national security and the future of 5G is now in the hands of the Ninth Circuit. Many judicial observers believe the lower court ruling was bad law. The appeals court must recognize what is at stake for our nation’s security and heed the warning from agencies with expertise in this space -- the Departments of Defense, Energy and Justice -- or the United States will lose the most important technological race of our time.

#### New reforms solve 5G innovation

Woo 21, Wall Street Journal reporter. (Stu, 5-26-2021, "The U.S. Is Back in the 5G Game", *WSJ*, <https://www.wsj.com/articles/us-5g-companies-11621870061)---language> edited, brackets

The U.S. government has upended the $35 billion-a-year cellular-equipment industry, ushering in a new era of competition and giving U.S. companies a shot at re-entering a sector they vacated years ago. In the past five years, only China’s Huawei Technologies Co., Sweden’s Ericsson ERIC +0.24% AB and Finland’s Nokia Corp. NOK +4.30% captured more than a 20% share of revenue in the wireless-equipment market, according to Dell’Oro Group, a research firm. No other competitor consistently cracked even 10%. Now that landscape is changing. Pushed by Washington’s campaign to [undermine] cripple Huawei over cybersecurity concerns, countries representing more than 60% of the world’s cellular-equipment market are considering or have already enacted restrictions against Huawei, says Dell’Oro Group. And to take advantage of that opening, the U.S. government—as well as governments in the U.K. and European Union—are considering financial support and other measures to boost domestic cellular-equipment makers trying to crack the three incumbents’ stranglehold on the market. The result is a newly competitive market that is reminiscent of the 1990s, when bygone industry giants such as Lucent, Motorola, Nortel, Siemens and Alcatel fought for a piece of a growing telecom-equipment pie. “It’s got a Wild West feel to it,” says Bill Plummer, a former Nokia and Huawei executive now working at JMA Wireless, a Syracuse, N.Y., 5G company. “We haven’t seen this since probably the eve of the dot-com bust—this dynamic and thriving competitive environment in wireless.” That new environment could benefit everyone—other than, of course, Huawei, Ericsson and Nokia. It will give a host of competitors a chance to win business that only a couple of years ago seemed out of reach. And the new competitive fervor should increase innovation and lower costs for wireless carriers, which could pass on savings—and the fruits of those innovations—to customers. American officials further say the new competitive landscape is crucial to U.S. efforts to counter China’s influence in developing 5G technology, the next generation of wireless technology that will serve as the building blocks for all sorts of future technologies—whether in robot-run factories, heart-rate monitors, or any number of industries and products. The country that dominates 5G will be well-positioned to lead the technology industry in terms of profits and talent in the years ahead.

#### Protecting Qualcomm solves their concerns in the squo—high royalties solve 5G innovation AND they’re wrong about predatory practices

Manne 19, \*Geoffrey Manne, President and Founder for the International Center for Law and Economics with [seven](https://www.c-span.org/search/?searchtype=Videos&personid%5b%5d=71132) videos in the C-SPAN Video Library; (January 22nd, 2019, “FTC v. Qualcomm: Innovation and Competition”, https://truthonthemarket.com/2019/01/22/ftc-v-qualcomm-innovation-and-competition/)

Knowing this, the FTC “dances around that essential element” (in Ohlhausen’s words) and offers instead a convoluted argument that Qualcomm’s business model is anticompetitive. Qualcomm both sells wireless communications chipsets used in mobile phones, as well as licenses the technology on which those chips rely. According to the complaint, by licensing its patents only to end-users (mobile device makers) instead of to chip makers further up the supply chain, Qualcomm is able to threaten to withhold the supply of its chipsets to its licensees and thereby extract onerous terms in its patent license agreements.

There are numerous problems with the FTC’s case. Most fundamental among them is the “no duh” problem: Of course Qualcomm conditions the purchase of its chips on the licensing of its intellectual property; how could it be any other way? The alternative would require Qualcomm to actually facilitate the violation of its property rights by forcing it to sell its chips to device makers even if they refuse its patent license terms. In that world, what device maker would ever agree to pay more than a pittance for a patent license? The likely outcome is that Qualcomm charges more for its chips to compensate (or simply stops making them). Great, the FTC says; then competitors can fill the gap and — voila: the market is more competitive, prices will actually fall, and consumers will reap the benefits.

Except it doesn’t work that way. As many economists, including both the [current](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2704591) and a prominent [former chief economist](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3244425) of the FTC, have demonstrated, forcing royalty rates lower in such situations is at least as likely to harm competition as to benefit it. There is no sound theoretical or empirical basis for concluding that using antitrust to move royalty rates closer to some theoretical ideal will actually increase consumer welfare. All it does for certain is undermine patent holders’ property rights, virtually ensuring there will be less innovation.

In fact, given this inescapable reality, it is unclear why the current Commission is continuing to pursue the case at all. The bottom line is that, if it wins the case, the current FTC will have done more to undermine intellectual property rights than any other administration’s Commission has been able to accomplish.

It is not difficult to identify the frailties of the case that would readily support the agency backing away from pursuing it further. To begin with, the claim that device makers cannot refuse Qualcomm’s terms because the company effectively controls the market’s supply of mobile broadband modem chips is fanciful. While it’s true that Qualcomm is the largest supplier of these chipsets, it’s an absurdity to claim that device makers have no alternatives. In fact, Qualcomm has faced stiff competition from some of the world’s other most successful companies since well before the FTC brought its case. Samsung — the largest maker of Android phones — developed its own chip to replace Qualcomm’s in 2015, for example. More recently, Intel has provided Apple with all of the chips for its 2018 iPhones, and Apple is rumored to be developing its own 5G cellular chips in-house. In any case, the fact that most device makers have preferred to use Qualcomm’s chips in the past says nothing about the ability of other firms to take business from it.

The possibility (and actuality) of entry from competitors like Intel ensures that sophisticated purchasers like Apple have bargaining leverage. Yet, ironically, the FTC points to [Apple’s claim](https://www.bloomberg.com/news/articles/2019-01-14/apple-coo-says-qualcomm-refused-to-provide-chips-for-2018-phones) that Qualcomm “forced” it to use Intel modems in its latest iPhones as evidence of Qualcomm’s dominance. Think about that: Qualcomm “forced” a company worth many times its own value to use a competitor’s chips in its new iPhones — and that shows Qualcomm has a stranglehold on the market?

The FTC implies that Qualcomm’s refusal to license its patents to competing chip makers means that competitors cannot reliably supply the market. Yet Qualcomm has never asserted its patents against a competing chip maker, every one of which uses Qualcomm’s technology without paying any royalties to do so. The FTC nevertheless paints the decision to license only to device makers as the aberrant choice of an exploitative, dominant firm. The reality, however, is that [device-level licensing is the norm](https://www.scribd.com/document/390181309/18-10-03-Nokia-Amicus-Brief-Iso-Qualcomm-on-PSJ) practiced by every company in the industry — and has been since the 1980s.

Not only that, but Qualcomm has not altered its licensing terms or practices since it was decidedly an upstart challenger in the market — indeed, since before it even started producing chips, and thus before it even had the supposed means to leverage its chip sales to extract anticompetitive licensing terms. It would be a remarkable coincidence if precisely the same licensing structure and the exact same royalty rate served the company’s interests both as a struggling startup and as an alleged rapacious monopolist. Yet that is the implication of the FTC’s theory.

When Qualcomm introduced CDMA technology to the mobile phone industry in 1989, it was a promising but unproven new technology in an industry dominated by different standards. Qualcomm happily encouraged chip makers to promote the standard by enabling them to produce compliant components without paying any royalties; and it willingly licensed its patents to device makers based on a percentage of sales of the handsets that incorporated CDMA chips. Qualcomm thus shared both the financial benefits and the financial risk associated with the development and sales of devices implementing its new technology.

Qualcomm’s favorable (to handset makers) licensing terms may have helped CDMA become one of the industry standards for 2G and 3G devices. But it’s an unsupportable assertion to say that those identical terms are suddenly the source of anticompetitive power, particularly as 2G and 3G are rapidly disappearing from the market and as competing patent holders gain prominence with each successive cellular technology standard.

To be sure, successful handset makers like Apple that sell their devices at a significant premium would prefer to share less of their revenue with Qualcomm. But their success was built in large part on Qualcomm’s technology. They may regret the terms of the deal that propelled CDMA technology to prominence, but Apple’s regret is not the basis of a sound antitrust case.

And although it’s unsurprising that manufacturers of premium handsets would like to use antitrust law to extract better terms from their negotiations with standard-essential patent holders, it is astonishing that the current FTC is carrying on the Obama FTC’s willingness to do it for them.

None of this means that Qualcomm is free to charge an unlimited price: standard-essential patents must be licensed on “FRAND” terms, meaning they must be fair, reasonable, and nondiscriminatory. It is difficult to asses what constitutes FRAND, but the most restrictive method is to estimate what negotiated terms would look like before a patent was incorporated into a standard. “[R]oyalties that are or would be negotiated ex ante with full information are a market bench-mark reflecting legitimate return to innovation,” [writes Carl Shapiro](https://faculty.haas.berkeley.edu/shapiro/standards2007.pdf), the FTC’s own economic expert in the case.

And that is precisely what happened here: We don’t have to guess what the pre-standard terms of trade would look like; we know them, because they are the same terms that Qualcomm offers now.

We don’t know exactly what the consequence would be for consumers, device makers, and competitors if Qualcomm were forced to accede to the FTC’s benighted vision of how the market should operate. But we do know that the market we actually have is thriving, with new entry at every level, enormous investment in R&D, and continuous technological advance. These aren’t generally the characteristics of a typical monopoly market. While the FTC’s effort to “fix” the market may help Apple and Samsung reap a larger share of the benefits, it will undoubtedly end up only hurting consumers.

#### No warming impact.

Ord 20, research fellow at the Future of Humanity Institute at Oxford University, has advised the World Health Organization, the World Bank, the World Economic Forum, and the UK Prime Minister’s Office and Cabinet Office. (Toby, “4. Anthropogenic Risks”, *The Precipice: Existential Risk and the Future of Humanity*, Oxford)

Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

#### Warming inevitable.

Curry 19, PhD, Professor Emeritus and former Chair of the School of Earth and Atmospheric Sciences at the Georgia Institute of Technology. (Judith A., 2-6-2019, “Hearing on Climate Change: The Impacts and the Need to Act”, pg. 7-8, [https://curryja.files.wordpress.com/2019/02/curry-testimony-house-natural-resources.pdf) — language](https://curryja.files.wordpress.com/2019/02/curry-testimony-house-natural-resources.pdf)---language) edited

Is it possible that something truly dangerous and unforeseen could happen to Earth’s climate during the 21st century? Yes it is possible, but natural climate variability (including geologic processes) may be a more likely source of possible undesirable change than [anthropogenic] manmade warming. In any event, attempting to avoid such a dangerous and unforeseen climate by reducing fossil fuel emissions will be futile if natural climate and geologic processes are dominant factors. Geologic processes are an important factor in the potential instability of the West Antarctic ice sheet that could contribute to substantial sea level rise in the 21st century.23

Under the Paris Agreement, individual countries have submitted to the UNFCCC their Nationally Determined Contributions (NDCs). Under the Obama Administration, the U.S. NDC had a goal of reducing emissions by 28% below 2005 levels by 2025. Apart from considerations of feasibility and cost, it has been estimated24 using the EPA MAGICC model that this commitment will prevent 0.03o [degrees] C in warming by 2100. When combined with current commitments from other nations, only a small fraction of the projected future warming will be ameliorated by these commitments. If climate models are indeed running too hot,25 then the amount of warming prevented would be even smaller. Even if emissions immediately went to zero and the projections of climate models are to be believed, the impact on the climate would not be noticeable until the 2nd half of the 21st century. Most of the expected benefits to the climate from the UNFCCC emissions reductions policy will be realized in the 22nd century and beyond.

Attempting to use carbon dioxide as a control knob to regulate climate on decadal to century timescales is arguably futile. The UNFCCC emissions reductions policies have brought us to a point between a rock and a hard place, whereby the emissions reduction policy with its extensive costs and questions of feasibility are inadequate for making a meaningful dent in slowing down the expected warming in the 21st century. And the real societal consequences of climate change and extreme weather events (whether caused by manmade climate change or natural variability) remain largely unaddressed.

This is not to say that a transition away from burning fossil fuels doesn’t make sense over the course of the 21st century. People prefer ‘clean’ over ‘dirty’ energy – provided that all other things are equal, such as reliability, security, and economy. However, assuming that current wind and solar technologies are adequate for providing the required amount and density of electric power for an advanced economy is misguided.26

The recent record-breaking cold outbreak in the Midwest is a stark reminder of the challenges of providing a reliable power supply in the face of extreme weather events, where an inadequate power supply not only harms the economy, but jeopardizes lives and public safety. Last week, central Minnesota experienced a natural gas ‘brownout,’ as Xcel Energy advised customers to turn thermostats down to 60 degrees and avoid using hot water.27 Why? Because the wind wasn’t blowing during an exceptionally cold period. Utilities pair natural gas plants with wind farms, where the gas plants can be ramped up and down quickly when the wind isn’t blowing. With bitter cold temperatures and no wind, there wasn’t enough natural gas.

A transition to an electric power system driven solely by wind and solar would require a massive amount of energy storage. While energy storage technologies are advancing, massive deployment of cost effective energy storage technologies is well beyond current capabilities.28 An unintended consequence of rapid deployment of wind and solar energy farms may be that natural gas power plants become increasingly entrenched in the power supply system.

Apart from energy policy, there are a number of land use practices related to croplands, grazing lands, forests and wetlands that could increase the natural sequestration of carbon and have ancillary economic and ecosystem benefits. 29 These co-benefits include improved biodiversity, soil quality, agricultural productivity and wildfire behavior modification.

In evaluating the urgency of CO2 emissions reductions, we need to be realistic about what reducing emissions will actually accomplish. Drastic reductions of emissions in the U.S. will not reduce global CO2 concentrations if emissions in the developing world, particularly China and India, continue to increase. If we believe the climate model simulations, we would not expect to see any changes in extreme weather/climate events until late in the 21st century. The greatest impacts will be felt in the 22nd century and beyond, in terms of reducing sea level rise and ocean acidification.

## 2NC

### Counterplan

#### Infrastructure is key to EV’s---that’s their I/L

Nilsen 6-4-2021 (Ella, “The fastest way to get more people to buy electric vehicles,” *Vox*, <https://www.vox.com/22463219/electric-vehicles-charging-station-infrastructure>)

Whether the United States can get to net-zero emissions by 2050 hinges hugely on our love of cars: They’re the dominant mode of transportation in America — ridership on trains, buses, and other public transit pales in comparison. Other transportation options are limited, and cars are ingrained in American culture. This makes switching to electric vehicles an attractive way to decarbonize. But in order to encourage more people to buy electric vehicles (EVs), the US needs a better charging station infrastructure. That is a key part of President Joe Biden’s American Jobs Plan, which proposes spending $174 billion on EVs, a sum that would boost supply chains for automakers, help subsidize the cost of cars for American drivers, and dramatically scale up the number of public electric vehicle charging stations along the nation’s roadways. There are currently about 42,490 public charging EV stations in the US, counting Level 2 chargers (taking about an hour of charging for 10 to 20 miles of range), and DC Fast chargers (taking about 20 minutes of charging for 60 to 80 miles of range). In comparison, there are about 115,000 gas stations in the US, most of which have multiple pumps. Biden’s plan would increase the number of charging stations more than tenfold by establishing grant and incentive programs for state and local governments and private companies to build 500,000 charging stations around America’s highways and in hard-to-reach communities by the year 2030. With a number of US carmakers pledging to go totally electric by 2035, that buildout could make EV charging ports as ubiquitous as gas pumps. At the moment, there aren’t enough reliable charging stations to accommodate a sudden increase in EV usage. About 627,000 plug-in EVs were bought in 2019 and 2020, and demand is expected to increase — especially as carmakers phase out gas-powered cars. “We’re so much better off than we were even five years ago ... but we still have a huge gap,” a Biden administration official told Vox. “This is an essential piece of the shift to EVs and it’s not going to happen on its own.” Transitioning American car drivers to electric vehicles is a crucial piece of the Biden administration’s overall plan to get the United States on a path to net-zero emissions by 2050, as well as its more immediate goal of limiting catastrophic climate change by cutting greenhouse gas emissions by 50 to 52 percent relative to 2005 levels by 2030. The US is the second-largest greenhouse gas emitter, after China, and cars are a big part of that. Transportation emissions account for 29 percent of total US greenhouse gas emissions (more than the electricity sector and industry), and light-duty vehicles like cars account for the vast majority of transportation emissions — close to 60 percent, as of 2018. Getting EV charging stations to be as ubiquitous as gas stations would help change that, but it’s just one piece of the puzzle. Even more important is increasing the availability and access for home and work charging stations — where experts believe most people will ultimately charge their cars. “Home charging is the most important; that’s where the highest number of charging [stations] will be needed,” said Scott Hardman, a researcher studying hybrids and EVs at the University of California Davis Institute of Transportation Studies. “It’s the cheapest; it’s the most convenient.” In addition to building public charging stations, the Biden administration plans to propose expanding tax credits for private infrastructure for home EV chargers, giving people an incentive to install them. This is key, experts told me; making charging station access equitable — ensuring they are affordable and accessible — is as important as increasing the total number of charging stations. Both are doable but will take serious government investment. But as with the rest of Biden’s agenda, the fate of this proposed network of charging stations could hinge on the fate of bipartisan infrastructure negotiations and whether the president decides to pass his plan with only Democratic votes. A charging station is not the same as a gas station Because gas stations are the most common method of refueling cars in the United States, powering up electric vehicles might call to mind clusters of charging stations next to convenience stores next to a highway or road. But the two modes of powering up are fundamentally different. For one thing, driving into a gas station, filling up, and driving out typically takes just a few minutes. The fastest EV charging stations — like DC Fast — on the other hand, take up to 20 minutes to charge enough to power the vehicle to a 60- to 80-mile range. Some state and city planners and EV experts are working on putting charging stations outside of restaurants, grocery stores, and shops, so that people can go off and eat a meal or shop while their car is refueling. “Most charging, we would hope and expect, is happening while people are doing something else,” said Eric Wood, a research engineer at the National Renewable Energy Laboratory’s Center for Integrated Mobility Sciences. “The idea that charging is happening slowly can be convenient for the driver as well as the grid.” More rapid charging technology is being developed, but the vast majority of available public charging stations currently in the US are the more sluggish Level 2 chargers, which require far more time to get to a full charge. There are just 5,141 DC Fast chargers in the US, with big gaps in parts of the Midwest and Mountain West, according to the Energy Department’s map of charging stations. “If your battery’s down to 20 percent, you’re going to have to stay plugged in for hours and hours,” said Ellen Hughes-Cromwick, the former chief global economist at Ford Motor Company, now a senior resident fellow at Third Way. The lack of charging infrastructure can mean headaches for drivers going on road trips, who need to plan their route to hit available charging stations. An October 2020 poll from YouGov found that charging time, hassle of charging, and cost of charging at home were all top reasons buyers who were looking for a new car weren’t considering an electric vehicle. As climate expert and activist Bill McKibben recently found while on a road trip from Vermont to Boston, if you’re in need of some juice and another driver is already using a public charger, you could be in for a nerve-wracking drive home. “The plug was in use once more, so I swallowed hard, did a little math, and drove on, arriving home with red lights flashing on the dashboard and a display indicating that my range was down to two miles,” McKibben recently wrote in the New Yorker. Competition and congestion around EV charging stations has gotten particularly bad in cities like San Francisco, where there’s a growing number of electric car drivers. (The places with the highest density of charging stations per 100,000 people are Vermont, California, Colorado, Hawaii, and Washington, DC.) “In San Francisco, there’s a huge congestion problem, and there are simply not enough plugs for EVs in that metro area,” said Hughes-Cromwick. “There is congestion in areas where EV demand has flourished. If we don’t get going on this, we will have roadblocks, especially for longer trips.” Another complication is that some electric car companies like Tesla — frustrated at the lack of investment in EV charging stations — have built out their own networks of superchargers that are only compatible with their cars. So if a driver of a Chevy Bolt or Nissan Leaf is running low on battery and the only charger around is a Tesla, they’re out of luck. The White House official I spoke to told me that any federal investment in EV charging stations will require universal chargers that can work with the full range of electric vehicles on the market. “It’s been incredibly important for Tesla to have done that buildout, but we’re thinking about this investment as chargers that can support any vehicle,” the official said. “It’s very clear it needs to be accessible for any driver of an EV.” That accessibility — along with the sheer number the White House hopes will be built — ought to, in theory, eliminate lines and congestion around chargers, while also ensuring charging is affordable. One thing it won’t do is solve the problem of charging times, but charging companies are developing faster chargers, and the second part of the White House’s proposal hopes to address that issue as well. Home charging is really important The most common and easiest way to charge an electric car doesn’t necessarily happen alongside a roadway; an at-home charging station “ends up for a lot of Americans being the only place they’d need to charge on a regular basis,” said Wood. Home charging is especially convenient for people who primarily use their electric car for short trips around their town or city; especially if a car has a 200- to 300-mile range, that could get them a couple of days or weeks on a single charge. This is important because Americans do the vast majority of their driving for short trips: Nearly 77 percent of vehicles drove distances of 10 miles or less per trip, according to the 2017 National Household Travel Survey (the most recent available). In other words, it’s far more often that we’re driving home, to work, or to run an errand than going on a long road trip. Home charging may be the most convenient, but home charging is also typically relegated to higher-income people who can actually afford to charge from within their home. For lower-income people who don’t have a garage or a dedicated parking spot with easy access to a charger, the logistics of charging at home become much more complicated. Just as policymakers are figuring out how to make EVs cheaper, experts told me that any expansion of charging stations needs to focus on how to make home charging more equitable and accessible for middle- and lower-income people. One option is getting more charging stations on residential streets, powered by the same electrical lines for street lights. This was piloted in London in 2020, with a number of street lights converted. But this is a relatively small project, and it hasn’t been adopted widely yet in other countries. Another option is increasing the number of charging stations at people’s workplaces, giving them another place to charge while their car is parked for hours. “Everyone parks their car somewhere at night; that’s where we need to get the charging to,” said Hardman. “We have to be careful it’s not just the privileged households that get the lower running costs.” The Biden administration official told Vox that the president’s infrastructure plan is proposing an extended or expanded tax credit to expand private infrastructure like charging stations at home. “There’s an outsize public role for that infrastructure,” the official said. “You have to have a mix of home charging, workplace, and public.” Overall, Biden’s goal is to make EVs more attractive in large part by making charging more convenient. But it will take significant government investment for Biden’s desired 500,000-EV network to become a reality. Getting a bipartisan group of lawmakers — particularly in the Senate, where Democrats need 10 Republican votes to pass legislation under normal rules — to agree to spend nearly $200 billion on EVs won’t be easy, as prolonged infrastructure negotiations have shown. But the US will need to make this change in order to meet its climate commitments, and to decrease its contribution to climate change.

#### Successful green infrastructure bill invigorates climate efforts globally

Geman 6-7-2021, staff @ Axios (Ben, “The global stakes of Biden's infrastructure negotiations,” *Axios*, [https://www.axios.com/biden-infrastructure-bill-climate-change-87b70d16-fdec-4c84-84a6-e7532c592f15.html)](https://www.axios.com/biden-infrastructure-bill-climate-change-87b70d16-fdec-4c84-84a6-e7532c592f15.html)//BB)

The infrastructure drama enveloping Capitol Hill could spill onto the global climate stage. Why it matters: Major new U.S. investments and policies could help spur other nations to take more aggressive and tangible steps to cut emissions. But failure to steer major new initiatives through Congress could hinder the White House diplomatic posture as the U.N. conference looms. State of play: The White House is negotiating with Republicans amid all kinds of uncertainty over whether Democrats can pass legislation without GOP backing. President Biden has proposed major investments in electric vehicles, grid tech, mass transit, clean energy tax incentives and many other initiatives. The negotiations with Republicans — who object to the plan's steep price tag and expansive definition of infrastructure — come ahead of November's critical United Nations climate summit. What they're saying: "Because of the importance of American leadership on climate, the rest of the world is definitely watching what happens on Capitol Hill," said the Environmental Defense Fund's Nathaniel Keohane. Keohane, who leads EDF's climate program, said major U.S. investments will bolster the country's economy and competitiveness. But they're also consequential internationally, he said. "The more the U.S. can demonstrate leadership — not only in the ambition of its targets but in the ambition of its implementation and the seriousness of its implementation — the more likely we are to see the rest of the world stepping into its ambition and accelerating its own climate action," he said. Catch up fast: In April the White House set a voluntary target under the Paris Agreement of cutting U.S. emissions by 50% below 2005 levels by 2030.But that's much harder to achieve absent Capitol Hill approval of new investments and incentives. The Atlantic Council's Margaret Jackson said Biden's climate initiatives thus far have borne some fruit, pointing to several nations strengthening their Paris targets. But Jackson, who has written about the importance of congressional action, also tells Axios: "U.S. allies and partners are still somewhat skeptical in terms of how much this administration can really accomplish, and will it be lasting."

#### Tech leadership is key to US norm setting---that’s what Kroenig and Jain is describing---saves the LIO

Allen 3-1-2021, analyst @ The Hill (John, “To outpace China on technology, the US needs a 'full-stack' strategy,” <https://thehill.com/opinion/technology/540808-to-outpace-china-on-technology-the-us-needs-a-full-stack-strategy?rl=1>)

From the COVID-19 pandemic and a deeply struggling economy to the critical need for racial justice and immediate action on climate change, President Biden now confronts one of the most daunting inheritances of any U.S. president in at least a century. His administration also faces a looming strategic challenge: whether the United States and its allies and partners will be able to find common cause in accelerating the development of next-generation technologies. If the United States and its democratic partners develop and deploy next wave technologies first, they will generate significant strategic advantages and strengthen their position in rule-setting forums. In turn, this will enable them to help craft norms and regulations for emerging technologies that are reflective of democratic values. Simply put, technological competition sits at the core of great power competition and ideological rivalry for the 21st century and beyond. And with the U.S. and its democratic allies seeking to outpace authoritarian regimes such as those in Beijing and Moscow, tech innovation will be a critical determinant of the continued strength and resilience of the liberal international order.

#### key to US soft power

Anderson 2-22-2021, Chairman & CEO of CG/LA Infrastructure, a firm focused on global infrastructure project development, driving productivity across countries, and maximizing the benefits of infrastructure for people in the U.S. and around the world (Norman, “The Biden Infrastructure Plan - 5 Actions To Jolt Us Awake, Now,” *Forbes*, https://www.forbes.com/sites/normananderson/2021/02/22/the-biden-infrastructure-plan5-actions-to-jolt-us-awake-now/?sh=1d72f17b2ebd)

Infrastructure is a First Order Issue. The mental model of the national political class doesn’t see infrastructure as a first order issue - it tends to be fourth in the list of the top 3, and in this Administration it is just after Covid, immigration and something else. It’s a very hard issue, and we have $28 trillion in national debt. Infrastructure is always a first order electoral issue, because it goes deep with people. Whether I have clean water, safe and rapid transit and reliable electricity is personal with me, just as it is with people all around the country. But it’s strange that infrastructure is not a first order issue for policy elites, since robust infrastructure investment is as strategic for economic growth, equity and environmental stewardship, as it is for the fundamentally critical exercise of soft power globally.

#### Regulation doesn’t tradeoff with innovation

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

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

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

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

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

#### 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 aff requires law enforcement, the CP doesn’t. And, the aff requires a judicial remedy, the counterplan doesn’t.

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

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

#### Regulations work through deterrence---that means the CP solves the same way the aff does

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

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

#### Emprically true

Shapiro and Rabinowitz 97, \*Rounds Professor of Law, University of Kansas. B.A., 1970, J.D., 1973, University of Pennsylvania, \*\*Director, Project on Federal Regulation of the Program on Law and Government and Fellow in Administrative Law, Washington College of Law, American University. B.A., 1977, The Johns Hopkins University; J.D., 1980, L.L.M. (Labor Law) 1984, Georgetown University Law Center (Sidney and Randy, “PUNISHMENT VERSUS COOPERATION IN REGULATORY ENFORCEMENT: A CASE STUDY OF OSHA,” Administrative Law Review)

Incentives for Compliance

Regulated entities have short-term and long-term incentives for regulatory compliance. Short-term incentives may deter compliance; but long- term incentives, which are both economic and sociological, may compel a firm to comply voluntarily with government regulations. Whether firms will cooperate, however, depends on government enforcement policies. I. Short-Term Incentives Economic theory teaches that a firm's short-run incentive to comply with agency regulations is a function of the cost of both compliance and non- compliance. Compliance costs include the expense of obeying agency regulations, while noncompliance costs are related to the probability that an agency will find a firm out of compliance, and the size of the penalty the agency will assess.8 If the risk of being inspected is not high, there is little incentive for a firm to comply. For example, if a firm expects to have ten violations at $1,000 per violation, it is potentially liable for a total fine of $10,000. But if the firm only has a one in 1,000 chance of being caught, it will calculate the cost of noncompliance as the probability of being in- spected (one in 1,000) multiplied by the amount of the fine ($10,000), or ten dollars. 9 This example may seem extreme, but it is not. Employers routinely avoid paying OSHA fines because, with the exception of a few industries specifically targeted by OSHA, most industries are seldom in- spected by the agency.lO During the previous five years, OSHA failed to inspect seventy-five percent of the 6,41 1 sites where a fatal or serious acci- dent occurred from 1994 through May, 1995.11 2. Long-Term Incentives Although a firm may lack short-term incentives to comply with agency regulations, managers also have long-term incentives that induce compli- ance. In the long-run, firms are influenced by a magnitude of additional factors including "the extent that compliance costs can be passed onto cus- tomers, the average size of the firms in the industry, and the degree to which the regulations are consonant with liability law, market pressures, and the long-run economic interests of the enterprises."12 Firms may "sense that the long-run gains of retaining a reputation as a law-abiding corporate citizen may outweigh the short-run gains from regulatory non- compliance."13 Bankers and institutional investors, for example, may regard a firm with a reputation for environmental irresponsibility as poorly managed and prone to trouble, legislators may give it a "cold shoulder" to avoid the appearance of cooperating with corporate lawbreakers, and consumers could boycott the firm if it is publicly attacked by environmental or consumer groups.14 Although these results are not inevitable, the fact that they might occur encourages "risk-adverse corporate managers" to seek a conservative, trouble-avoiding policy. Social incentives also mitigate the impact of short-run economic considerations. Corporate managers are not just "value maximizers — of profits or of reputation" but they "are also often concerned to do what is right, to be faithful to their identity as law abiding citizens, and to sustain a self- concept of social responsibility."16 Professional training may also provide 17 a source of norms that encourage compliance. Employees concerned with regulatory matters, such as biologists, environmental engineers, industrial hygienists, lawyers, occupational physicians, safety experts, and toxicolo- gists, are interested in reducing the costs of regulatory compliance, but they also are loyal to the standards of their profession.18 The compliance advice given by these professionals is likely to reflect these norms.

#### The plan artificially props up the smallest and least secure 5G companies— turns cybersecurity

Tom Wheeler 19. Fellow in Governance Studies at The Brookings Institution, former Chairman of the FCC. 9/3/2019. “Why 5G requires new approaches to cybersecurity.” https://www.brookings.edu/research/why-5g-requires-new-approaches-to-cybersecurity/#cancel.

Proactive cyber investment today is the exception rather than the rule. For public companies, the Securities and Exchange Commission (SEC) and others are driving change from the corporate board-level on down through management. A favorite entrance point for cyberattacks, however, remains the smaller companies, many of which are outside of the scope of these efforts. Unfortunately, the SEC’s efforts [impact only the less than 10% of American companies that are publicly owned](https://www.privco.com/knowledge-bank/intro-to-private-companies/). At the very least, where companies have a role in critical infrastructure or provide a product or service that, if attacked, could imperil public safety, there must be the expectation that cybersecurity risks are being addressed proactively.[[2]](https://www.brookings.edu/research/why-5g-requires-new-approaches-to-cybersecurity/#footnote-2) Implementation of machine learning and artificial intelligence protection Cyberattacks on 5G will be software attacks; they must be countered with software protections. During a Brookings-convened discussion on 5G cybersecurity, one participant observed, “We’re fighting a software fight with people” whereas the attackers are machines. Such an approach was like “looking through soda straws at separate, discrete portions of the environment” at a time when a holistic approach and consistent visibility across the entire environment is needed. The speed and breadth of computer-driven cyberattacks requires the speed and breadth of computer-driven protections at all levels of the supply chain.

#### Especially because entrants in telecom lack resources to invest in cybersecurity.

Edward Longe 20. Policy manager at the American Consumer Institute. 9/24/2020. “A Serious Casualty of Antitrust Legislation: Cybersecurity.” https://www.theamericanconsumer.org/2020/09/a-serious-casualty-of-antitrust-legislation-cybersecurity/.

Proposals to break up large technology companies would be profoundly damaging to consumer privacy and cybersecurity as smaller technology companies and startups lack the resource capabilities of making substantial capital investments required to ensure consumer data is protected or deal with the newly emerging cyberthreats associated with new technology devices such as the Internet of Things (IoT). Every year, [Microsoft](https://www.techrepublic.com/article/why-microsoft-spends-over-1-billion-on-cybersecurity-each-year/) faces about 7 trillion cyberthreats, many of which are becoming increasingly sophisticated. To combat these cyberattacks, [Microsoft](https://www.techrepublic.com/article/why-microsoft-spends-over-1-billion-on-cybersecurity-each-year/) invests “over $1 billion to cybersecurity” and recently created a dedicated [Cyber Defense Operations Center](https://www.microsoft.com/en-us/msrc/cdoc) that is staffed around the clock to ensure its consumer data is protected. Microsoft is not the only major tech corporation to invest significant amounts into protecting its consumer data. In 2018, Apple reported it would invest $10 billion dollars over the next few years on new U.S. Data Centers that are responsible for ensuring the [protection of consumer data](https://www.paloaltonetworks.com/cyberpedia/what-is-a-data-center). These data centers do not just hold the companies’ sophisticated cybersecurity technology, but also employ those who are responsible for monitoring emerging threats and ensure that the company can provide [superior cybersecurity](https://www.computerworld.com/article/3253248/apple-provides-superior-cybersecurity-protection.html) to its consumers. Outside of this direct investment in cybersecurity and cybersecurity facilities, big tech companies like Facebook, Amazon, Google, Apple, invested approximately [$2.5 billion](https://www.cbinsights.com/research/facebook-amazon-microsoft-google-apple-cybersecurity/) dollars into supporting cybersecurity companies that develop products which protect everything from login credentials, credit card information and social security numbers. Without the significant investment large technology companies make in protecting consumer data and deterring cybercrime, consumers would have significantly fewer protections. Some smaller technology companies simply do not have the sources to invest in sophisticated cybersecurity technology, leaving their data vulnerable to cyberattacks and crime. Breaking up the large technology companies would therefore weaken cybersecurity and increase the vulnerability of consumer data. As communication technology becomes more advanced, significant investment in cybersecurity will also be needed to ensure it is protected. While IoT technology allows the interconnection various internet of computing devices (cameras, smart appliances, and smart home gadgets) and enables them to receive and send to your home computer and smartphone, they could be vulnerable to a number of threats. [Mobile Network Mapping](https://www.tripwire.com/state-of-security/featured/emerging-technology-cyber-security/) is one threat that home networks could face and is where “attackers can create maps of devices connected to a network, identify each device and link it to a specific person.” To meet these and other cyberthreats, networks and network devices will require significant investment in security that will undoubtedly run into the [billions](https://www.nextgov.com/emerging-tech/2020/06/industry-calls-government-invest-billions-developing-secure-5g-networks/166490/) of dollars and require collaboration between industry and government. Given the billions that will be required to protect against online threats, it is clear that currently larger tech companies will have the means to invest and meet the demands for cybersecurity.

### New CP

#### The United States federal government should reform its patent law to limit

#### patent continuance,

#### findings of willfulness,

#### reasonable royalty rates, and

#### damage calculations.

Good---logical extension of condo and justified by new 2AC addons

#### Solves patent holdup

Lemley ’7 [Mark; January; Law Professor at Stanford University; Boston College Law Review, “Ten Things to Do About Patent Holdup of Standards (And One Not To),” Vol. 47]

C. Antitrust Law Can't Solve the Holdup Problem

Note what is not on this list: antitrust law. I have made ten more or less radical proposals for doing something about patent holdup, and not one of them mentions antitrust, except to say antitrust law should get out of the way of SSOs. That's not an accident. I think antitrust law serves a valuable purpose, but where the holdup problem is concerned, it is a backstop. In this particular circumstance, it's a backstop that's going to apply only if private efforts in SSOs and IP law have already failed us.

Even then, it is not clear that antitrust law is up to the task of policing patent holdup. 88 Courts may be reluctant to second-guess what they see as the judgment of patent law to give certain rights to patent owners. 89 Certainly, some courts have shown undue deference to patents even in circumstances that more clearly violate the antitrust laws. 90 Further, proving an antitrust violation requires detailed evidence [\*168] of both causation and intent, something that may be difficult even when, as a policy matter, a patentee should not be permitted to extend its rights. 91 We have yet to see a successful contested prosecution of standard-setting abuse. 92 Antitrust law can play a role here in extreme cases, such as in In re Ramous, Inc. 93 But if we design the patent law and the SSO rules correctly, those cases should not arise.

CONCLUSION

Patents provide needed incentives. But in certain circumstances, they can give a patentee too much power to restrict an integrated product on the basis of a patent covering a minor component of that product. That fact, coupled with unscrupulous behavior of some patentees, creates serious problems in the IT industry in general and SSOs in particular. Patent law should seek to realign incentives so that the value any given patentee can capture bears a reasonable relationship to the contribution its invention makes. SSOs should be diligent in finding out what patents exist and what it will cost to license them. And antitrust law should facilitate rather than interfere with this process. If we can accomplish these changes, we can ensure that patent law serves its proper role in encouraging rather than stifling innovation.

### Solvency

#### Patent pools are good— unbundling is creates new administrative fees and is worse for competition

Jurata 2021 (John “Jay” Jurata Jr., partner in Orrick's Washington D.C., office, leader of the firm's Antitrust & Competition Group, has represented Microsoft, Sonos, Sharp, LG, and Panasonic in antitrust suits, University of San Diego School of Law, J.D., Emily N. Luken, Georgetown University Law Center, J.D., cum laude, “Glory Days: Do the Anticompetitive Risks of Standards-Essential Patent Pools Outweigh Their Procompetitive Benefits?” San Diego Law Review, VOL. 58: 417, 2021, https://digital.sandiego.edu/cgi/viewcontent.cgi?article=3412&context=sdlr)

Unbundling is the act of breaking up a previously intact SEP-portfolio and distributing portions of it to other entities, such as pools, PAEs, or both, while retaining an interest in revenues generated by those other entities through assertion and licensing activities.162 Unbundling can be used as a mechanism to evade the FRAND commitment because, once a portfolio is unbundled, the resulting SEP-holders collectively can charge more in royalties than likely would have been possible absent the unbundling, or if the amount is greater than what a single licensor could have charged. For example, when Nokia decided to exit the mobile phone business following slumping sales, it decided to monetize its patent portfolio by transferring some of its SEPs to two PAEs that went on an aggressive campaign to extract exorbitant royalties from companies making devices implementing cellular standards.163 Nokia and the PAEs, allegedly acting at Nokia’s behest, could collectively seek more royalties in the aggregate than Nokia could have done with its unbundled portfolio. In another example, the PAE IP Edge acquired thirty patents from Siemens in 2018 and then asserted the portfolio through a series of lawsuits by plaintiff Q3 Networking LLC in both federal court and the International Trade Commission.164 A simple illustration demonstrates how unbundling can lead to higher royalties. As part of its antitrust consent decree with the DOJ, IBM agreed to license any patents necessary to interoperate with its mainframe computers on a reasonable and nondiscriminatory basis.165 Five years later, after expiration of those provisions, IBM voluntarily continued those patent licensing practices.166 Under that voluntary program, IBM charged royalty rates of one percent of the selling price for each patent used, up to a maximum of five percent of the selling price, for each licensed product.167 Under this framework, IBM offered a portfolio of thousands of patents for the same price it charged for licensing five patents.168 Why? The answer is obvious: IBM recognized that once a certain royalty threshold was met, companies would not pay more to obtain a license to the additional patents in its portfolio. Now consider what would have happened had IBM broken that same portfolio into multiple sub-parts. Each of the entities licensing those subsets of patents would be incentivized to obtain the maximum amount of royalties for each subset of patents, without adequately accounting for the aggregate royalty. Likewise, unlike the scenario where potential licensees were negotiating with IBM, the licensees would not have insight into the ultimate number of patents they need to license and thus would not benefit from assessing the value of the full unaggregated portfolio.169 This risk is even greater when there is a lack of transparency in such unbundling efforts.170

### Adv 1

#### [2] — Countries turn inward — prefer post-COVID evidence.

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

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

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

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

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

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

#### [3] — Empirics prove — downturn causes threat deflation.

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

Why Might Economic Crisis Cause Rivalry Termination?

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

#### Multilat fails — lack of coherence on priorities and free-riding

Schweller, Columbia PhD, 11 [2011 Randall Schweller is a professor of political science at Ohio State University. “Emerging Powers in an Age of Disorder,” Global Governance, http://www.academia.edu/1211850/Emerging\_Powers\_in\_an\_Age\_of\_Disorder]

Liberals believe that the transition from unipolarity to multipolarity will unfold smoothly because the world is primed for peace: great-power security is plen-tiful, territory is devalued, and a robust liberal consensus exists among the es-tablished powers—one ensconced in a thick ensemble of global institutions thatput strict limits on the returns to power. Operating within this benign interna-tional setting, the emerging poles will be driven more by the prospect of max-imizing their own absolute gains than by fear of relative losses or thetemptation to make gains at each other’s expense.Arestored global balance willarise, therefore, without traditional “hard” balancing in the system’s core. Con-sistent with these propositions, the great-power concert model assumes thatemerging powers will be supporters—so-called responsible stakeholders—of the Western liberal order. There are two problems with this assumption. First, integrating new powers within existing international institutions is trickier than the model assumes. Rising non-Western powers do not always share the United States’ view on global governance; it is unreasonable to ex-pect them to adopt wholesale the principles, norms, and rules of an inheritedWestern order. And even when the basic interests of the established and emerg-ing powers align, their priorities may differ. For example, both China and the United States would like to see North Korea’s nuclear program dismantled. But Washington places a high priority on this objective whereas Beijing desires first and foremost to maintain good relations with Pyongyang. The bot-tom line is that principled differences and mismatched priorities between established and emerging powers, and between emerging power themselves, suggest that multipolarity does not necessarily imply cooperative and success-ful multilateralism. 9 Second, “catching up” requires the rising state to focus most of its ener-gies on internal matters such as promoting sustainable economic and social de-velopment, redressing the domestic imbalances caused by dramatic andsudden economic growth, and managing the often dangerous socioeconomic dislocations associated with rapid urbanization of the population. Because accepting costly international commitments can jeopardize these domestic plansand demands, rising powers are reluctant to actively support the established order. They would prefer, instead, that the declining hegemon pay the costs of order while they ride free. To the extent that free-riding incentives prevail, the established and emerging powers are less likely to co manage the international system than to clash over the questions: Who has responsibilities for what?What is a fair contribution to the collective good? Who decides whether aglobal initiative is a collective good? Tensions can be expected to mount in the system’s core, as the declining hegemon cajoles rising powers to accept more of the responsibilities for meeting global challenges while they, in turn, demand greater voice and representation but shirk their fair share of global bur-dens. Meanwhile, the process of power diffusion will continue to flatten the world, producing a more balanced multipolarity with no single dominant power capable of providing global order. Frustrated by the shirking of its peer competitors and seeking to arrest its own decline, the hegemon will eventually retrench from its global commitments, leaving no state or group of states in charge of the international order or whatever remains of it. The system willthen be on automatic pilot.

### Adv 2

#### Aff can only hope to solve 18% of growth-based emissions — K outweighs.

Alexander, 15—lecturer at the Office for Environmental Programs, University of Melbourne (Samuel, *Sufficiency Economy* pg 109-110, dml)

There is one point deserving of further emphasis. In response to the problems of climate change and peak oil, many people naturally hold up renewable energy as the salvation of civilisation, arguing that all we need to do is transition to renewable energy and the problems of peak oil and climate change will be resolved. The problem is that it is highly doubtful that renewable energy will ever be able to sustain a growth-orientated, industrial civilisation. Although it may be technically feasible from an engineering perspective, the problems of intermittency and storage make renewable energy supply much more expensive and problematic than most analysts think (see Moriarty and Honnery, 2012; Trainer, 2013a; Trainer, 2013b). Even if electricity could be affordably supplied by renewables, electricity only constitutes about 18% of final energy consumption (IEA, 2012), meaning that there is still around 82% of energy to replace, including oil used for transport, pesticides, and plastics, etc. If we try to produce that remaining segment of energy with biofuels, the production of biofuels would compete with land for food production, a conflict that also seems to be already underway, despite the relatively low levels of biofuels production today (Timilsina, 2014). Biofuels also have a very low energy return on investment – between 1 and 3 (Murphy, 2014: 12), suggesting that they will never be able to sustain an industrial civilisation, as we know it today.

#### At worst (10 degrees), warming causes population declines — not extinction.

Piper 19 — Kelsey Piper, citing John Halstead climate change mitigation researcher at the Founders Pledge. [Is climate change an "existential threat" — or just a catastrophic one? 6-28-2019, https://www.vox.com/future-perfect/2019/6/13/18660548/climate-change-human-civilization-existential-risk]

I also talked to some researchers who study existential risks, like John Halstead, who studies climate change mitigation at the philanthropic advising group Founders Pledge, and who has a detailed online analysis of all the (strikingly few) climate change papers that address existential risk (his analysis has not been peer-reviewed yet).

Halstead looks into the models of potential temperature increases that Breakthrough’s report highlights. The models show a surprisingly large chance of extreme degrees of warming. Halstead points out that in many papers, this is the result of the simplistic form of statistical modeling used. Other papers have made a convincing case that this form of statistical modeling is an irresponsible way to reason about climate change, and that the dire projections rest on a statistical method that is widely understood to be a bad approach for that question.

Further, “the carbon effects don’t seem to pose an existential risk,” he told me. “People use 10 degrees as an illustrative example” — of a nightmare scenario where climate change goes much, much worse than expected in every respect — “and looking at it, even 10 degrees would not really cause the collapse of industrial civilization,” though the effects would still be pretty horrifying. (On the question of whether an increase of 10 degrees would be survivable, there is much debate.)

Does it matter if climate change is an existential risk or just a really bad one?

That last distinction Halstead draws — of climate change as being awful but not quite an existential threat — is a controversial one.

That’s where a difference in worldviews looms large: Existential risk researchers are extremely concerned with the difference between the annihilation of humanity and mass casualties that humanity can survive. To everyone else, those two outcomes seem pretty similar.

To academics in philosophy and public policy who study the future of humankind, an existential risk is a very specific thing: a disaster that destroys all future human potential and ensures that no generations of humans will ever leave Earth and explore our universe. The death of 7 billion people is, of course, an unimaginable tragedy. But researchers who study existential risks argue that the annihilation of humanity is actually much, much worse than that. Not only do we lose existing people, but we lose all the people who could otherwise have had the chance to exist.

In this worldview, 7 billion humans dying is not just seven times as bad as 1 billion humans dying — it’s much worse. This style of thinking seems plausible enough when you think about past tragedies; the Black Death, which killed at least a tenth of all humans alive at the time, was not one-tenth as bad as a hypothetical plague that wiped us all out.

Most people don’t think about existential risks much. Many analyses of climate change — including the report Vice based its article on — treat the deaths of a billion people and the extinction of humanity as pretty similar outcomes, interchangeably using descriptions of catastrophes that would kill hundreds of millions and catastrophes that’d kill us all. And the existential risk conversation can come across as tone-deaf and off-puttingly academic, as if it’s no big deal if merely hundreds of millions of people will die due to climate change.

Obviously, and this needs to be stressed, climate change is a big deal either way. But there are differences between catastrophe and extinction. If the models tell us that all humans are going to die, then extreme solutions — which might save us, or might have unprecedented, catastrophic negative consequences — might be worth trying. Think of plans to release aerosols into the atmosphere to reflect sunlight and cool the planet back down in the manner that volcanic explosions do. It’d be an enormous endeavor with significant potential downsides (we don’t even yet know all the risks it might pose), but if the alternative is extinction then those risks would be worth taking.

But if the models tell us that climate change is devastating but survivable, as most models show, then those last-ditch solutions should perhaps stay in the toolkit for now.

Then there’s the morale argument. Defenders of overstating the risks of climate change point out that, well, understating them isn’t working. The IPCC may have chosen to maintain optimism about containing warming to 2 degrees Celsius in the hopes that it’d spur people to action, but if so, it hasn’t really worked. Maybe alarmism will achieve what optimism couldn’t.

That’s how Spratt sees it. “Alarmism?” he said to me. “Should we be alarmed about where we’re going? Of course we should be.”

Swedish teenager Greta Thunberg has taken an arguably alarmist bent in her advocacy for climate solutions in the EU, saying, “Our house is on fire. I don’t want your hope. ... I want you to panic.” She’s gotten strong reactions from politicians, suggesting that at least sometimes a relentless focus on the severity of the emergency can get results.

So where does this all leave us? It’s worthwhile to look into the worst-case scenarios, and even to highlight and emphasize them. But it’s important to accurately represent current climate consensus along the way. It’s hard to see how we solve a problem we have widespread misapprehensions about in either direction, and when a warning is overstated or inaccurate, it may sow more confusion than inspiration.

Climate change won’t kill us all. That matters. Yet it’s one of the biggest challenges ahead of us, and the results of our failure to act will be devastating. That message — the most accurate message we’ve got — will have to stand on its own.

## 1NR

### FTC Tradeoff

#### 1---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]

#### 2---magnitude---WW3

**FDI 12**

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

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

#### 1---Turns LIO

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).

#### 2---Turns growth

Sanborn 18, managing editor @ Health Care Finance (Beth Jones, “Healthcare spending in the U.S. sends damaging ripple effect across other major sectors, households, Moody's report says,” *Health Care Finance News*, <https://www.healthcarefinancenews.com/news/healthcare-spending-us-sends-damaging-ripple-effect-across-other-major-sectors-households>)

Significantly higher healthcare spending in the United States will continue a damaging ripple effect across the economy, crunching public sector budgets and those of businesses and households as well. That's according to a new report from Moody's Investor Service. The U.S. spends almost double what other high-income countries spend as a share of their economies, Moody's said, totaling $3.3 billion in 2016 or 18 percent of GDP. Households and businesses made up nearly half of the spending. "An aging population and rising costs will drive spending higher, with credit negative implications for the public and private sectors," Moody's said. Rising healthcare spending will also strain public sector budgets. Medicare and Medicaid funding exposes state budgets to ballooning healthcare costs, as Medicaid accounts for nearly 30 percent of states' spending and 16 percent of their own revenue. State Medicaid spending is projected to increase faster than tax revenue over the next decade, and will absorb an even greater share of state resources. Medicaid expansion states face greater uncertainty thanks to cuts in federal contributions that could further strain budgets. Some states also face additional pressure and credit risk from employee health coverage costs. For some states, that includes retiree health benefit coverage and other postemployment benefit liabilities. Growing healthcare costs also impact America's households, which are unable to spend their money in other sectors when their healthcare takes up more of their resources. Health insurance premiums and out-of-pocket expenses represent the bulk of U.S. household spending on healthcare. Roughly half the population get their healthcare coverage from their employer, but premiums have grown faster than wages. Medicare beneficiaries aren't immune either, since they have to pay premiums and then also purchase supplemental coverage for services not covered like vision and dental. "The impact of healthcare costs on household finances and well-being reverberates through the U.S. economy since household consumption accounts for nearly 70 percent of annual economic output. The erosion of households' purchasing power could weaken the retail goods and services sectors, whereas the impact on households' debt repayment capacity might affect the large US consumer finance sector," the report said. Economic growth is also being increasingly encroached upon by healthcare spending in that the high spend comes without notable improvements in population health compared to countries that spend less, and potential investments in education and infrastructure are sidelined because resources have already been soaked up. This trend could mean prolonged stalling of economic growth potential and could serve as a barrier to U.S. businesses becoming more competitive.

#### 3---Turns warming

Trudell 5 – JD

Robert H., Fall, Food Security Emergencies And The Power Of Eminent Domain: A Domestic Legal Tool To Treat A Global Problem, 33 Syracuse J. Int'l L. & Com. 277, Lexis

In 1994, the United Nations Development Program, an organization dedicated to sustainable development in the developing world, identified seven main categories of threats to human security: economic, health, environmental, personal, community, political, and food security. 71 Certainly, food security is fundamental to each of the other listed threats because a population that cannot feed itself will not be able to thrive, will be increasingly unhealthy, and will destroy the environment of the land it depends upon in its desperate pursuit of food.  [\*288]  The lack of food security in sub-Saharan Africa makes it one of the least stable regions of the world. 72 Such instability has a negative effect on global security, especially in the poorer countries of the world, which suffer from major violent conflicts. 73 One cause of this instability can be seen in the connection of food insecurity with the degrading sub-Saharan environment. 74 In the search for sustainable agriculture, the pressures of a growing population have resulted in a reduction of cropland. 75 In Africa, forests are cut down to make grazing pastures, then grazing pastures erode away and become deserts or areas of land incapable of producing any sustainable harvest because the soil has no more nutrients. 76 One commentator, writing about sub-Saharan Africa, noted: "the relationship that exists between human security and environmental degradation is best illustrated in the agricultural sector." 77 Many of the farmers in this region still use the "slash-and-burn" method of subsistence farming. 78 The forests of sub-Saharan Africa are cut down for agriculture because, as will be further discussed below, the African soil quickly loses its ability to sustain plant life so more and more land is needed to grow the same amount of food. 79

#### 4---Link turns case---Expanded antitrust enforcement of anticompetitive practices causes backlash.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### 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.

#### FTC intervenes in FRAND and patent disputes.

Elizabeth A. N. Hass et. al. 18. James T. Mckeown, John F. Nagle, Kate E. Gehl. Partner and litigation attorney with Foley & Lardner LLP, and current vice chair of the firm’s national Antitrust Practice Group. partner in Foley & Lardner LLP's Milwaukee office, is a member and the former chair of the firm’s national Antitrust Practice and is a former member of the firm’s Management Committee.  senior counsel and litigation lawyer with Foley & Lardner LLP. DOJ and FTC Signal Shifts in Antitrust Enforcement of Essential Patent Disputes. No Publication. 10-10-2018. https://www.foley.com/en/insights/publications/2018/10/doj-and-ftc-signal-shifts-in-antitrust-enforcement

FTC’s Approach to FRAND Violations

Although the DOJ’s New Madison Approach has attracted considerable publicity, historically the FTC, and not the DOJ, intervened most frequently on behalf of implementers in FRAND disputes over the past two decades. Accordingly, Chairman Simons’ recent comments – even if representing his personal views – may mark a more significant change in enforcement actions in the United States.

Speaking to the Global Antitrust Enforcement Symposium at Georgetown University Law Center,4 Simons echoed his counterpart at the DOJ, stating, “We agree with the division leadership that a breach of a FRAND commitment standing alone is not sufficient to support a Sherman Act violation. The same is true even for a fraudulent promise to abide by a FRAND commitment. More is needed.”

#### Health Care k2 ag

CHQPR 21, Center for Healthcare Quality and Payment Reform, national policy center that facilitates improvements in healthcare payment and delivery systems. Founded in 2008, CHQPR is an internationally-recognized source of unbiased information and assistance on payment and delivery reform. CHQPR’s publications are among the most widely used and highly regarded resources on payment reform in the world. CHQPR has provided information and technical assistance to Congress, federal agencies, national organizations, and to physicians, hospitals, employers, health plans, and government agencies in nearly every state in the U.S. and several other countries to help them design and implement successful payment and delivery system reforms(<https://ruralhospitals.chqpr.org/Importance.html>)

The Importance of Rural Hospitals to the Rest of the Country

The more than 1,600 small rural hospitals represent over one-third of the total hospitals in the country. However, most people have never seen one of them in person because most people don’t live in the rural counties they serve. In fact, the majority of the nation’s population lives in a relatively small number of urban counties, and most of those counties are many miles away from the communities served by rural hospitals. Should residents of urban areas care what happens to hospitals in small, distant rural communities? The answer is yes, for several reasons: Food Supply. Most of the nation’s food supply comes from rural communities because of the large amounts of land needed to grow crops and raise cattle. Rural hospitals provide healthcare services to the owners and workers on the farms and ranches in these areas, to the owners and workers at the businesses that supply the farms and ranches, and also to their family members. Most of these hospitals are small because of the low population densities in agricultural areas. 38% of agricultural crops are produced in counties in which the only hospitals are small rural hospitals. An additional 5% of crops come from counties that have no hospital at all and the closest hospital is a small rural hospital in another county.15 48% of the country’s production of animals for food occurs in counties in which the only hospitals are small rural hospitals. An additional 6% are in counties that have no hospital at all and the closest hospital is a small rural hospital in another county. Energy Production. Rural communities are home to most of the nation’s coal mining and gas and oil production, as well as wind farms and solar energy facilities. Almost 40% of those communities rely on small rural hospitals for healthcare services. 33% of the country’s mining and oil and gas production occurs in counties in which the only hospitals are small rural hospitals. An additional 6% of fossil fuel production comes from counties that have no hospital at all and the closest hospital is a small rural hospital.16 Source: 2017 Census of Agriculture, BEA 2018 Gross Domestic Product by County, CMS Provider of Services Files. “Close to Small” means the county has no hospital and the closest hospital is a small rural hospital. Recreation and Tourism. Many popular recreation, historical, and tourist sites are located in rural areas. If visitors to these sites have accidents or health problems that require medical treatment, their initial care will often be provided by a small rural hospital. For example, the top 10 most-visited National Parks, including the Grand Canyon, Yosemite, and Yellowstone, had almost 50 million visits in 2019, and all are located in rural areas.17 In most of them, the closest hospital to at least one of the entrances and visitor centers at the Park was a small, rural hospital. In half of the parks, the closest hospital to all of the entrances and visitor centers at the Park was a small, rural hospital, while the closest large hospital was over 75 minutes away in the majority of cases.18 Shipping and Other Travel. Interstate highways connect the nation’s urban areas to each other, to the nation’s agricultural areas, and to recreation sites, and they pass through rural areas to do so. A trucker, traveler, or tourist who has an accident or medical problem on an interstate highway is likely to depend on a small rural hospital located near a highway interchange for emergency care. The coronavirus pandemic in 2020 made many city dwellers realize for the first time how dependent they are on rural communities for their food supply and how much that supply could be affected by health problems in rural communities.19 The pandemic has also made healthy individuals all across the country realize how important it is to have hospitals with adequate capacity, not only where they live or work, but where they might be quarantined during travel.

#### Collapse of rural health care causes devastatingly high food prices

Alemian 16, Vice President - Capital Crest Financial Group (David, “Rural Healthcare Is a Matter of National Security,” *MD Magazine*, <https://www.hcplive.com/view/rural-healthcare-is-a-matter-of-national-security>)

Rural health organizations are already struggling with enormous turnover rates and costs that run up into the millions of dollars each year. The additional financial burden of penalties from Medicare and Medicaid will put many rural health organizations at risk of going out of business. If too many rural health organizations go out of business, it then becomes a matter of national security and here’s why: In most rural communities, the healthcare organization is the largest employer. When the largest employer goes out of business, the community collapses and people move away. What was once a thriving community then becomes a ghost town. Rural America produces the food that feeds the rest of the country. What will happen when our amber waves of grain turn to desert wastelands because there is no one to work our great farmlands? As the source of food dries up, and store shelves empty, the price of food will go through the roof. As food prices go up, hyperinflation will become a reality, and our printed money will become worthless. Almost overnight, Americans will begin to go hungry because they won’t be able to afford to put food on the table.

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

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

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

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

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

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

#### Current enforcement is all talk

JED GRAHAM 9/16/21. Writes about economic policy for Investor's Business Daily.

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 11% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 18%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

#### Plan is different.

Masuda et. al. 21. Funai, Eifert & Mitchell, Ltd. Masuda, Funai, Eifert & Mitchell, Ltd. is a U.S. law firm headquartered in Chicago, Illinois, “The Implications of President Biden's "Executive Order on Promoting Competition in the American Economy" 8.18.21. https://www.masudafunai.com/articles/the-implications-of-president-bidens-executive-order-on-promoting-competition-in-the-american-economy?utm\_source=Mondaq&utm\_medium=syndication&utm\_campaign=LinkedIn-integration

On July 9, 2021, President Joe Biden signed a sweeping executive order titled the “Executive Order on Promoting Competition in the American Economy” (the “Order”), affirming the policy of the Biden administration to “enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony.” To achieve this, the Order, among other things, directs regulatory agencies to assert oversight over certain business practices and encourages regulatory agencies to develop and/or strengthen rules. The Order includes 72 initiatives by more than a dozen federal agencies.

The Order specifically cites the areas of “labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.” The scope of this order is broad. On the other hand, the Order itself does not create new regulations or laws, leaving the specific implications of it vague.

#### \*3. Agency’s streamlining current enforcement in order to balance its priorities

FTC 9/14/21. Media Contact Peter Kaplan. “FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload.” https://www.ftc.gov/news-events/press-releases/2021/09/ftc-streamlines-investigations-in-eight-enforcement-areas

At the joint recommendation from its Bureau of Consumer Protection and Bureau of Competition, the Federal Trade Commission voted to approve and make public a series of resolutions that will enable agency staff to efficiently and expeditiously investigate conduct in core FTC priority areas over the next ten years.

The Bureaus recommended that the Commission authorize eight new compulsory process resolutions in these essential areas: (1) Acts or Practices Affecting United States Armed Forces Service Members and Veterans; (2) Acts or Practices Affecting Children; (3) Bias in Algorithms and Biometrics; (4) Deceptive and Manipulative Conduct on the Internet; and (5) Repair Restrictions. (6) Abuse of Intellectual Property; (7) Common Directors and Officers and Common Ownership; and (8) Monopolization Offenses.

“These resolutions enable the FTC to take swift action against a whole host of illegal conduct in important areas of concern to the Commission,” said Holly Vedova, Acting Director of the Bureau of Competition. She noted that, “Companies engaging in conduct implicated by these resolutions should be forewarned: the FTC looks forward to aggressively using these resolutions and will not hesitate to take action against illegal conduct to the fullest extent possible under the law.”

“Harmful practices – especially those targeting children, veterans, and marginalized communities – will not be tolerated by this Commission,” said Samuel Levine, Acting Director of the Bureau of Consumer Protection. “Today’s resolutions ensure our staff can rapidly respond to allegations of abuse and fight fraud without delay.”

Specifically, the resolutions approved by a Commission vote of 3-2 will allow:

Service members and Veterans: harmful business practices directed at service members and veterans are a source of significant public concern, and, now, FTC staff will be able to expeditiously investigate any allegations in this important area.

Children under 18: harmful conduct directed at children under 18 has been a source of significant public concern, now, FTC staff will similarly be able to expeditiously investigate any allegations in this important area.

Algorithmic and Biometric Bias: allows staff to investigate allegations of bias in algorithms and biometrics. Algorithmic bias was the subject of a recent FTC blog.

Deceptive and Manipulative Conduct on the Internet: this omnibus expands a previous omnibus resolution on deceptive practices, which expired on Aug. 1. The existing resolution, has enabled the FTC to develop investigations and bring cases in a variety of areas including day trading services, tech support scams, the BOTS Act, payment processing, and the deceptive marketing of goods and services online, including pandemic-related goods like fake Clorox products and face masks. In addition to the areas covered by the existing resolution, this expanded version covers the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

Repair Restrictions: enhances the FTC’s ongoing investigations into restrictions on repair and builds on the FTC’s recent Policy Statement on Right to Repair. It would cover a wide range of anti-consumer and anti-competitive abuses and facilitate staff’s impending investigation of violations of the Magnuson Moss Warranty Act’s anti-tying provisions.

Abuse of Intellectual Property: allows staff to investigate abuses of intellectual property rights. Conduct involving abuse of intellectual property rights has been a source of much anticompetitive and deceptive conduct in many different areas, including pharmaceuticals, technology and gasoline refining, and this omnibus will allow staff to expeditiously investigate allegations in this area.

Common Director and Officers and Common Ownership: facilitates investigations of both ownership stakes in competing companies that may be anticompetitive as well as interlocking directorates that may violate Section 8 of the Clayton Act, 15 U.S.C. § 19. Interlocking directorates and common ownership continue to raise significant competitive concerns.

Monopolistic Practices: Market power abuses by tech companies and other large companies are rightly a source of bipartisan concern. This omnibus will allow staff to more expeditiously investigate market power abuses by dominant firms that are precluding businesses and entrepreneurs from being able to compete, particularly in digital markets.

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoenas. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. Civil investigative demands and subpoenas are assigned to a Commissioner for review and authorization by the FTC’s Office of Secretary, typically on a rotating basis or according to availability. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. The resolutions announced today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus covers investigations into competition or consumer protection conduct violations under the FTC Act.

Streamlining and improving efficiency at the agency is vitally important given the increased volume of investigatory work created by the surge in merger filings. Having already doubled between 2010 and 2020, the number of mergers filed with the antitrust authorities this year hit a record-setting pace of 2,067 acquisitions for the first seven months alone. With these resolutions in place, the FTC can better utilize its limited resources and move forward in earnest to quickly investigate potential misconduct. The Bureaus are now authorized to take steps to ensure that any compulsory process orders are enforceable.