# 1NC

## OFF

### OFF---Politics DA

#### Ukraine aid will pass---timing is key

Tyler Olson 3-3, covers politics for Fox News Digital, “White House asks Congress for $10B in Ukraine aid as Putin's brutal war ratchets up”, <https://www.foxnews.com/politics/biden-ukraine-aid-congress-appropriations>, March 3rd, 2022

The Biden administration is requesting at least $10 billion in new money to provide aid to Ukraine amid Russian President Vladimir Putin's war against the nation, according to the Office of Management and Budget (OMB).

"As part of the agreement lawmakers are working to finalize ahead of the March 11th deadline, we’re also urging Congress to include supplemental funding for two urgent and immediate needs: supporting Ukraine, and continuing our ongoing COVID response efforts," OMB Acting Director Shalanda Young said Thursday.

"The United States has provided over $1.4 billion in assistance to Ukraine since 2021, and, together with our European allies and partners, we are holding Russia accountable for its unjustified and unprovoked invasion," Young added. "To continue this important work and further support the Ukrainian people, we are requesting $10 billion to deliver additional humanitarian, security, and economic assistance in Ukraine and the neighboring region in the coming days and weeks."

The Biden administration's request comes as Ukraine faces increasingly heavy bombings and missile attacks from Russia. Meanwhile, Russian warships are headed toward Odesa for what U.S. officials anticipate will be an amphibious assault beginning as soon as Thursday.

Congress needs to pass an omnibus spending bill or a continuing resolution by March 11 or else the government will shut down. Lawmakers passed multiple continuing resolutions in recent months to avoid shutdowns amid disagreements over spending levels in the larger omnibus package.

Congressional leaders are pushing hard to pass the full omnibus in the coming days – but it's not yet clear they will be able to.

"I'm very concerned," Sen. Dick Durbin, D-Ill., said Wednesday. "It's time for us to… get this done. I cannot imagine at this moment of history, with Ukrainians facing what they're facing and our allies so anxious to make sure that we're on board, that we are delaying this any longer. We've got to move on this and the sooner the better."

Senate Majority Leader Chuck Schumer, D-N.Y., also said the Senate "must" pass Ukraine aid, and "the quickest way we can assure that aid reaches Ukraine is through the omnibus, which needs to get done next week."

#### The plan trades-off

Peter C. Carstensen 21, Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School, LL.B. from Yale Law School, MA in Economics from Yale University, “The “Ought” and “Is Likely” of Biden Antitrust”, Concurrences – Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Aid defuses conflict---failure legitimizes invasion which goes nuclear.

David Rothkopf 3-3, CEO, The Rothkopf Group. Citing: Lt. Gen. Doug Lute, Former U.S. Ambassador, NATO. Former Deputy US National Security Adviser; Bill Taylor, US Ambassador, Ukraine; Jon Wolfsthal, Nonresident Scholar, Nuclear Policy Program; Joe Cirincione, Distinguished Fellow, Quincy Institute for Responsible Statecraft, "How the West Can Help Ukraine," Daily Beast, 03/03/2022, <https://www.thedailybeast.com/how-the-west-can-help-ukraine>.

There is a consensus among Western leaders and strategic thinkers about how to respond to Russia’s brutal and unjustifiable aggression against Ukraine. Unprecedented and sweeping economic sanctions, moving NATO forces toward its eastern frontiers, and providing substantial lethal aid to Ukraine are the pillars of this response.

While this approach may not be sufficient to stop Russian forces from seizing Kyiv, Kharkiv, and other cities, it has already aided Ukraine in slowing Russian offensives, and should be useful in supporting a protracted Ukrainian insurgency against the Russian occupiers. If the will to maintain economic pressure on Russia remains strong enough for long enough, it could also create real incentives for Russia to negotiate and, perhaps, to withdraw.

But in the next few days, it is already clear that Russia is going to increase its pressure on Ukraine. Its tactics—which have already included indiscriminate missile and artillery attacks on civilian centers and the use of prohibited weapons, including cluster and thermobaric munitions—will grow even more inhumane. The civilian toll will rise. In all likelihood, it will rise greatly.

Vladimir Putin, frustrated with his progress to date, sensing what he must do next and anticipating the Western response, has prepared the ground for his stepped-up attacks by rattling his nuclear saber. He has asserted that he has put his “defensive” nuclear forces on alert. Earlier, he made reference to what he asserted would be the unprecedented costs should NATO or others step in to try to stop his invasion of his democratic neighbor.

His goal was to forestall any consideration of NATO putting troops on the ground to stop him or of introducing any other military efforts to counter his onslaught, such as air attacks. His warning was effective. Western leaders have ruled out no-fly-zones or other approaches that might be both difficult to implement and carry with them the risk of triggering “World War III” or a devastating nuclear exchange.

So pressure to do more is likely to grow even as the options for doing more have been severely limited.

Not only does this situation create real, deep conundrums for Western planners and profound unease for the otherwise brave defenders of Ukraine, it raises real long-term questions.

Notably, if the conclusion from this war is that nuclear-armed states have the ability to do whatever they want to their neighbors, however cruel and unjustified, because the risks of fighting back against them are too high, the world will not be left a safer place.

Consider for example, Putin’s calculations regarding further reconstituting his warped vision of a Russian empire if he were to feel that NATO’s Article 5 guarantees—that all members will come to the aid of any member who is attacked—were actually just a paper tiger. Would he feel that he could roll his tanks into Latvia without fear of being challenged because so many Western leaders consider the threat of nuclear war too high to ever challenge him?

Will NATO—at the moment its renaissance is being celebrated—actually reveal to its principal adversary that it is not really up to the job for which it was intended?

These are not easy questions to answer. The risks of nuclear war are as real as they are ghastly. But the risks of giving all the world’s Putins the license to run roughshod through their neighborhoods are also, as history shows, profound.

Lt. Col. Alexander Vindman, former National Security Council (NSC) director for European affairs, said to me, “Western governments are terrified of Russia’s nuclear saber-rattling. We’ve lost our nerve in the face of shallow threats.”

Tom Nichols, a long-time professor at the U.S. Naval War College and writer of the “Peacefield” newsletter for The Atlantic, framed the situation in the following way: “The war in Ukraine is brutal and horrific. But none of that is an argument for a plunge into the abyss.”

But, Nichols cautions, “We are all suffering from the ‘CNN effect,’ watching this devastation in real time. It’s hard not to be emotional about it—I am—but a NATO intervention would be the greatest gift Putin could ask for and risks catastrophic consequences."

What options do we have?

Lt. Gen. Doug Lute, former U.S. ambassador to NATO and former deputy U.S. national security adviser, recommends: “We should focus on anti-armor Javelins and anti-air Stinger missiles, getting as many as possible as fast as possible into the hands of Ukrainian forces and setting up resupply networks in Poland and Romania to sustain the effort over time. These are easy to transport and distribute, relatively simple to use and have already proven effective against Russian forces. We should be stockpiling these now and providing truck transport that can be handed off to Ukrainians at the border. We should take steps to ensure communications for the Ukrainian regime with secure digital comms, including satellite access. The ability of the leadership to communicate is crucial to holding together the military and the civilian resistance.”

Lute emphasizes that now is the time to take such actions while Russia’s attentions are focused away from the western part of the country—the ones that border the EU—and where a long-term resistance is likely to be based. He also advises that more of the private sector should be mobilized (as has happened with recent energy company and airline efforts to pull out of Russia) and that we continue to “pay attention to the flanks” by cultivating the engagement and support of potential new NATO members like Finland and Sweden.

On my Deep State Radio podcast this week, former U.S. Ambassador to Ukraine Bill Taylor added that the U.S. could provide more forms of technical assistance like helping the Ukrainian Air Force counter Russian jamming of their radio frequencies, providing Multiple Launch Rocket Systems (MLRS) while we still can get such larger weapons systems into the country, and considering new sanctions like those targeting Russia’s oil sector. (Canada has just announced energy sector sanctions against Russia.)

But what do we do about the moral hazard associated with caving in to Putin’s nuclear gamesmanship? The former NSC senior director for arms control and nuclear proliferation in the Obama White House, Jon Wolfsthal, said: “Putin’s threats are designed to shield him from US/NATO response while he takes conventional action against Ukraine. While abhorrent, it has been clear all along that we were not going to commit troops to Ukraine for a variety of reasons, including the risk of nuclear war (President Biden is 100% right on that). I don’t think [Putin] will use nukes, knows it would be suicide, and not clear his military would support that action.”

Wolfsthal continues, “I don’t agree that failure to send troops or ‘defend’ Ukraine adds to the danger that he might roll into a NATO state. I believe that he is very well-aware that any kinetic move against NATO territory would trigger a full Article 5 response. This is one of the reasons he has moved against non-NATO states and why is he so adamant that Ukraine not join NATO. He knows he would never be able to reabsorb it into greater mother Russia. His attack has united NATO in a remarkable way. And it has shown NATO states that they can be strong and protected without making nuclear threats. And it shows how extreme and unhinged making nuclear threats are.”

Joe Cirincione, a distinguished fellow at the Quincy Institute and nuclear non-proliferation expert and advocate, observed, “Nuclear weapons are praised by most theorists as providing stability, as keeping the peace in Europe. But here we have Putin using nuclear weapons as a shield to wage conventional war—the kind of war in Europe nuclear weapons were supposed to prevent.”

While he concurs our current strategies are effective and may define the limits of what we can and should do and while he also does not believe Putin would attack NATO, after the conflict, Cirincione argues: “After the war, we will have a brief window to discuss not just what our policies should be going forward but to examine what went wrong with our policies in the past. This was not supposed to happen. Either the invasion or the nuclear risks. So, why did it? What could we have done better? I think we have to go back to the 1990s and examine our policies for NATO expansion (Should we have moved so quickly? Could we have reassured Russia more fully?). But also on the nuclear front.”

In a recent article, Cirincione cited a 2007 warning from former Secretaries of State George Shultz and Henry Kissinger, former Defense Secretary William Perry, and former Sen. Sam Nunn, that “unless we moved step by step to reduce and eventually eliminate nuclear weapons, we would “be compelled to enter a new nuclear era that will be more precarious, psychologically disorienting, and economically even more costly than was Cold War deterrence.”

Cirincione says we are now “in that world.” He adds: “If we assume that there must be a diplomatic termination of this war (it is possible that it could end with a palace coup against Putin but I wouldn’t bet on it), then we are going to have to offer Putin some face-saving way out. We are going to have to address his legitimate security concerns (and he does have some).”

Among the suggestions he favors are, “pulling our 100-150 tactical nuclear weapons out of Europe in exchange for reduction in his force, restoring the ban on intermediate-range nuclear weapons that ended when Trump tore up the INF treaty, getting rid of the pointless missile interceptors and silos we deployed in Poland and Romania that Putin fears could be used to house offensive nuclear weapons… getting real about the ‘strategic stability talks’ to include immediate, deep reductions in nuclear forces, making mutual declarations to never use nuclear weapons first and making that the international nuclear gold standard all states should follow, [with] mutual steps to reduce the alert levels of nuclear forces by taking them off hair trigger alert and (as some already do) taking the warheads off of the delivery vehicles.”

Lute says, “Before Putin backs down, he will double down.” That is certainly true. But a growing consensus is that if the U.S. and our allies maintain our resolve and our unity and by ratcheting up existing measures rather than taking steps that risk escalation, in the end Putin and the Russians will likely have to withdraw from Ukraine without having achieved any of their major goals.

### OFF---States CP

#### The 50 state governments and relevant sub-federal territories, in coordination through the National Association of Attorneys General, should increase prohibitions on tacit collusion, at least including automatic antitrust probes into industries that are highly concentrated and have rising margins and year-over-year price hikes in excess of ten percent.

### OFF---Multilat CP

#### The United States federal government should establish and advocate a framework for contingent international cooperation that increases prohibitions on tacit collusion, at least including automatic antitrust probes into industries that are highly concentrated and have rising margins and year-over-year price hikes in excess of ten percent.

#### The CP’s framework multilateralizes antitrust---explicit reciprocity bypasses generic barriers AND spills over to deep economic integration

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 40-48

B. Between Contracts and Networks: Frameworks

Another dichotomy that dominates the integration of competition policy pertains to the forms of internationalization, which in the competition policy space have generally been dominated by contract-style treaties on the one hand and by open networks on the other.166 Between these two models lies what seems to be an under-utilized alternative, which I call a “framework for contingent cooperation.”

[FOOTNOTE] 166 This binary view dominates the literature. See, e.g., Edward M. Graham, “Internationalizing” Competition Policy: An Assessment of the Two Main Alternatives, 48 Antitrust Bull. 947, 949 (2003) (“[M]echanisms [for antitrust internationalization] range from bilateral treaties creating arrangements for cooperation between or among national competition law enforcement agencies to informal working arrangements among agencies.”); Eleanor M. Fox, International Antitrust and the Doha Dome, 43 Va. J. Int’l L. 911, 912 (2003) (contrasting “horizontalism” with “globalism”); Anu Piilola, Assessing Theories of Global Governance: A Case Study of International Antitrust Regulation, 39 Stan. J. Int'l L. 207, 247 (2003) (“Rather than drafting overarching multilateral agreements on antitrust laws, cooperation efforts in the immediate future are more likely to succeed in managing existing diversity and promoting voluntary convergence based on approximation of domestically applied standards. Networks of antitrust authorities are well-suited to facilitate this process of cooperation and voluntary convergence.”). [END FOOTNOTE]

A “framework” in the sense that I am using that term is a facilitative arrangement that does not constitute a treaty under international law,167 and which does not carry the charge of international legal obligation, but which involves an exchange of specific and reciprocally contingent commitments by participant jurisdictions to engage in mutually beneficial conduct. Specifically, each party states that it will extend certain benefits to each other party so long as each other does likewise; the parties may also create supplementary mechanisms to monitor and/or adjudicate compliance with these commitments.168

A framework of this kind is not a treaty: it is what Kal Raustiala calls a “pledge,”169 and what Charles Lipson calls an “informal” agreement,170 involving no legal obligation, and it involves no commitment of the parties’ reputation for law-abiding behavior.171 On the other hand, it differs from an open, information-sharing network because it precisely specifies behavioral commitments, and because each of the parties shares an understanding that concrete consequences will promptly follow—exclusion from the benefits provided by others—if its behavior materially deviates from the terms of the commitment.172 A framework is therefore essentially a specific declaration of intention to engage in conduct that benefits others, contingent upon parallel behavior by other participating states, without obligatory status under international law.

This is, in some sense, the direct opposite of the approach typically taken in competition policy chapters in trade agreements. The provisions of competition policy chapters partake of the substance of treaty law, but are generally framed in broad terms rather than specifics, and generally do not reflect a shared understanding that specific consequences will attend breach. By contrast, frameworks do not bind in international law, are framed in specific terms than aspirational generalities, and reflect an understanding that the benefits of cooperation will be withdrawn in the event of violation.

Contingent cooperation thus depends for its effectiveness primarily upon three important dynamics. The first and most important of these is the rationality of strategic cooperation. A familiar mainstream view holds that to a significant extent states behave in international society in ways that rationally serve their interests.173 And when cooperation over a series of interactions is overall in the interests of each member of a group, but when each member faces a rational incentive to defect from the terms of cooperation in individual cases, familiar economic theory teaches that a strategic cooperative equilibrium can be maintained among the parties.174 In contingent cooperation, each party understands that if it defects materially from the terms of the framework, the other participants will withdraw the excludable benefits of cooperation, and this provides the incentive to comply.175

Contingent cooperation can be made more stable by the introduction of certain structures designed to monitor compliance (just as with a cartel among private companies).176 This might among other things involve the creation of a central “facilitator” that is responsible, in a general sense, for obtaining, collecting, and processing information necessary to sustain a cooperative equilibrium.177 Depending on the purpose and scope of the cooperation project, this could include (for example): reviewing the text of laws, regulations, and policy documents for consistency with the terms of the framework; conducting peer-review-style evaluations and certifications; hosting voluntary dispute resolution processes, including mediation and/or arbitration, to determine whether and when the framework has been violated; or even receiving and handling complaints of violations ombudsman-fashion (i.e., receiving the complaint, giving the subject of the complaint an opportunity to respond, and publishing findings and conclusions). A central facilitator could also go beyond a policing function and offer a common forum for certain forms of cooperation and information sharing. The nature of such broader functions, and the extent to which they would be useful or desirable, would depend on the nature and purpose of the cooperation.

The second dynamic that powers contingent cooperation is the normative appeal of the project itself. The point here is not unlike what Gráinne de Búrca calls “mission legitimacy”: the normative force of the underlying purpose of a cooperative project, and specifically the power of that normativity to secure the acceptance and cooperation of those who participate.178 Parties joining projects of contingent cooperation can be expected to be in some sense self-selecting: they join such endeavors because, in part, they are genuinely committed to promoting and achieving the ends that the project represents, and they embrace the project of cooperation as worthwhile.179 It may sound a little naïve to suggest that a project of cooperation may be more likely to “stick” if it has some normative appeal to the participating polities, but legal scholarship has long recognized that states do what they undertake to do more often than strictly rational analysis would predict.180 And I think the proposition that genuine commitment to a goal can contribute to compliance is in truth somewhat less naïve than the converse idea that compliance is just as likely without it.

The third source of a framework’s effectiveness is to be found in the acculturative and socializing effects of interaction in an environment in which values and practices are shared and reinforced as normative, and in which attention is paid to the existence and nature of violations. There is a rich and complex literature on the ways in which states, state actors, and the individuals within them may be “socialized” or “acculturated” by repeated engagement with others through common institutions and shared environments of normativity, eventually contributing to the emergence of obligations with genuine normative force.181 Jutta Brunnée and Stephen Toope have pointed out ways in which the force of legal obligation itself arises from shared communities of practice grounded in social reality and shared understandings, not formal commitments.182 As they put it, “[s]tability may be aided by explicit articulation of a norm in a text, but it is ultimately dependent upon [an] underlying shared understanding and a continuous practice of legality.”183

Participation in an endeavor of contingent cooperation may help to engender the development of such understandings and practices, and these may contribute to the effectiveness of the framework. In the longer term, this may even result in the creation of a legal instrument. But this progression is not necessary for acculturation to exert a reinforcing effect: for, as Anu Bradford accurately notes, there is no reason to think that “the pathway from nonbinding to binding rules” is an inevitable or even a natural one.184

The distinctive value of a framework is that it provides a low-cost way for jurisdictions to explore and participate in possible arrangements of mutual benefit that depend upon shared concrete understandings regarding future behavior, but without bearing the burden of an obligation under international law, without running the reputational risk of having to break a treaty, and without facing the domestic hurdles (or political scrutiny) that a treaty would necessitate.185 Use of such a framework may help to reduce the concerns grounded in political morality that might otherwise attend inter-jurisdictional action in sensitive areas:186 to use a term I have coined elsewhere, as contingent practices from which states could withdraw at any time, frameworks would benefit from considerable resources of “exit legitimacy.”187

Frameworks are not suited to every application. They seem particularly apt for types of international cooperation that generate excludable benefits for other participants and can be reasonably well monitored: in the sphere of competition policy, for example, this would include commitments to provide nondiscriminatory access to procurement markets as well as many forms of antitrust cooperation (including cooperation with one another’s investigations, coordination of enforcement activity, the operation of joint filing systems for merger review and cartel leniency programs, and so on). Certain guarantees of nondiscriminatory treatment by SOEs could also be extended on a selective basis. On the other hand, contingent cooperation is much less suitable for projects that require strong and highly credible guarantees of commitment from the participants (in which case a traditional treaty-contract would seem more appropriate188) or groups of parties still lacking the prerequisite agreement on the terms and ambit of desirable cooperation. Nor is it suitable in the absence of sufficient confidence in the ability or incentive of other parties to deliver on their commitments: in these cases, open dialogue and information exchange through a network would seem preferable. Nor, obviously, is it a good fit for projects in which the benefits of cooperation are non-excludable.189 To pick an obvious example, contingent cooperation would not recommend itself as a natural choice for an international project to introduce SOE discipline: the benefits are non-excludable (there is no obvious way to withdraw them selectively in the event of defection) and compliance is very difficult to monitor, so the use of a framework is unlikely to make much of a contribution.190

#### Normative convergence through antitrust harmonization prevents extinction from resource depletion, human rights abuse, and war

Geoffrey A. Manne 13, Lecturer in Law at Lewis & Clark Law School, Executive Director of the International Center for Law & Economics, JD from the University of Chicago Law School, Former Olin Fellow at the University of Virginia School of Law, and Dr. Seth Weinberger, PhD and MA in Political Science from Duke University, MA in National Security Studies from Georgetown University, AB from the University of Chicago, Associate Professor in the Department of Politics and Government at the University of Puget Sound, “International Signals: The Political Dimension of International Competition Law”, The Antitrust Bulletin, Volume 57, Number 3, Last Revised 7/18/2013, p. 497-503

A. The international political environment

At the root of international political theory is the fundamental maxim that relations between sovereign nations in the absence of mitigating factors is characterized by intense competition, mutual distrust, the inability to make credible commitments, and war.20

[FOOTNOTE] 20 Political scientists characterize the international system as “anarchic.” In the absence of world government (or other mitigating force), competition between states is largely unregulated by external laws or enforcement. The world is characterized by mistrust, the inability to contract, and the ultimate reliance on a state’s own devices. See THOMAS HOBBES, LEVIATHAN 80 (Edwin Curley ed., 1994) (in the state of nature “the condition of man . . . is a condition of war of everyone against everyone”). In fuller terms:

There is no authoritative allocator of resources: we cannot talk about a ‘world society’ making decisions about economic outcomes. No consistent and enforceable set of comprehensive rules exists. If actors are to improve their welfare through coordinating their policies, they must do so through bargaining rather than by invoking central direction. In world politics, uncertainty is rife, making agreements is difficult, and no secure barriers prevent military and security questions from impinging on economic affairs.

ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY 18 (1984). Efficiency-enhancing gains from trade are difficult to appropriate because trade itself (and any other form of exchange or agreement between nations) is characterized by the absence of credible commitments to future behavior. And underlying the problem is the ever-present threat of the use of force. See, e.g., Kenneth N. Waltz, Anarchic Orders and Balances of Power, in NEOREALISM AND ITS CRITICS 98, 98 (Robert O. Keohane ed. 1986) (“The state among states . . . conducts its affairs in the brooding shadow of violence . . . . Among states, the state of nature is a state of war.”). Although this dire characterization of the international environment is, of course, a stylized approximation of the real world—there are always overlying constraints on sovereign behavior in the form of norms, reputational effects, and customary international law, HEDLEY BULL, THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS (1977)—it is a useful and widely accepted heuristic for crafting a theory of international politics. [END FOOTNOTE]

As one commentator notes, “Nations dwell in perpetual anarchy, for no central authority imposes limits on the pursuit of sovereign interests.”21 And states are “unitary actors who, at a minimum, seek their own preservation and, at a maximum, drive for universal domination.”22 As a result, states operating on the international stage are unable to judge the sincerity of each others’ stated intentions when those intentions are contrary to this manifest interest. Because of self-help rules, states are forced in the main to assess their own security environment by assessing the capabilities of competitors, downplaying their motives. Given that the nature of the competition can implicate the fundamental survival of one (or more) of the actors, actions taken by one state to improve its own security must necessarily decrease the security of its competitor; in the absence of mitigation, security is a zero-sum game.23 In a world where cooperation is exceedingly difficult (because there is no authority to enforce agreements, nor any basis for assessing the reliability of another state’s commitments), international relations are characterized by a continuous race to the bottom, a mindless arms race rather than the opportunity to realize gains from cooperation.

It is obvious that not all relations between states are characterized by the security dilemma, however. Canada, for example, shares an unprotected border with the most powerful nation in the world without degenerating into a destructive and costly arms race. By some mechanism, then, Canada must be able reliably to judge U.S. intentions, even absent the apparent ability by the United States credibly to bind itself to a nonaggressive policy toward Canada. The key to mitigating the pressures of the security dilemma is the ability to distinguish a state with aggressive and expansionist tendencies from a benign one.24 States can be distinguished by their fundamental type. They can be classified as “revisionist,” that is, they seek to subvert the dominant order, or they can be classified as “status quo,” that is, they seek to support it.25 But, as noted, a state’s ability to judge another’s intentions (as opposed simply to counting its armaments) is extremely tenuous and comes at great cost. In fact, political science offers few well-understood mechanisms for judging a state’s propensity for aggression.

At the same time, hegemonic states have an abiding interest in spreading and maintaining their dominant worldview.26 Not only is it imperative that dominant states receive credible signals about other states’ intentions, but it is also important that dominant states attempt to inculcate their norms within other states that, over time, might mount credible challenges to the dominant states’ security.27 The spread of hegemony through internalization of norms occurs for three reasons. First, states with similar institutions and sympathetic domestic norms are simply better and more reliable trading partners, and it is in the hegemon’s economic interest to instill its norms.28 Second, states with defensive military postures and that adhere to the status quo present significantly less security risk to dominant states.29 And finally, the hegemon has a normative interest in the spread of its culture, its worldview, and its norms.30 This conception of the playing field upon which states interact leads to the conclusion that, entirely apart from the immediate and substantial economic benefits to a state from well-ordered interactions with other states, hegemonic states also have a national security and a normative interest in the information to be gleaned from the fact that these interactions are, in fact, well ordered.

In the absence of centralized enforcement, privately held and nonverifiable information as to a state’s fundamental type is the critical problem in assessing motives.31

[FOOTNOTE] 31 See KEOHANE, supra note 20, at 31 (“Order in world politics is typically created by a single dominant power [or hegemon].”). States are consequently classified as one of two types, “revisionist” or “status quo,” based on their acceptance and adherence to the political norms, institutions, and rules created by the hegemon. Status quo states are those that try to improve their condition from within the framework of the accepted world order. Revisionist states, by contrast, seek to gain position both by working outside that order and by working to subvert the hegemonic order itself. For instance, the existing world order is generally accepted to be that created by the United States after World War II. It comprises a liberal international economic order, the use of multilateral institutions (such as the United Nations and the WTO), negotiation for dispute resolution rather than the threat of violence, and the promotion of liberal democratic moral norms. See, e.g., Schweller, supra note 24, at 85; HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 32 (1948). Trade disputes between status quo states (like tariff disputes between the United States and Europe) are resolved through peaceful negotiation rather than the threat of war. Although status quo states do not entirely eschew the use of violence, they typically seek international authorization and legitimization before employing military force, as in the multilateral operations in Iraq, Kosovo, and Afghanistan. Revisionist states, on the other hand, such as North Korea, Iran, and China, will more readily use military force as a bargaining tool and are more reluctant fully to participate in transparent military, economic, and political negotiations. [END FOOTNOTE]

States wishing to escape the pressures of the security dilemma and engage in cooperative behavior need a means of conveying their preferences to others in a credible manner. There are, in general, two means by which such information can be transmitted: states can either bind themselves in such a way that they are unable to deviate from a stated behavior (known as “hands tying” in Schelling),32 or they can signal their intention to engage in a specified course of action by incurring costs sufficiently large that they discourage the misrepresentation of preference.33

International institutions can play a crucial role in facilitating the transmission of this information.34 In particular, international agreements over the terms of trade, even without binding supranational enforcement authority, provide a means for states to bind themselves to a desirable course of behavior in the short run and, more importantly, to signal their acquiescence to the ruling world order in the long run. Because compliance with treaty obligations often requires signatories to alter their domestic laws to reflect the terms of the treaty, the costs of compliance can be substantial. In the short run, to the extent that states enforce their domestic laws they can bind themselves to a certain course of behavior. In the long run, a state’s willingness to incur the substantial costs of changing its laws, both the transaction costs inherent in changing domestic laws and the even more substantial costs in domestic political capital, signals a willingness to engage other states on the terms set by the reigning international power. Moreover, there may be unintended effects, as changes in domestic laws result in a new set of domestic incentives to which actors respond, and new windows of opportunity may open up through which policy entrepreneurs can push for the internalization of new norms.35 Competition laws in particular are susceptible to this mode of analysis.

Most nations have adopted competition laws as a way to actualize (as well as to symbolize) a degree of commitment to the competitive process and to the prevention of abusive business practices . . . . The introduction of competition laws and policies has also gone hand in hand with economic deregulation, regulatory reform, and the end of command and control economies.36

The surest way to remove the threat of war, increase wealth, conserve resources, and protect human rights is through fundamental agreement between all states (or at least effective agreement between verifiably status quo states) under a normative umbrella that promotes all of those values. This normative convergence can be effected through the stepwise internalization of the sorts of economic and democratic values inherent in international economic liberalization, perhaps most notably through the adoption of principled international antitrust standards.37

### OFF---Midterms DA

#### The plan causes Dem control of the Senate in ‘22

Zephyr Teachout 20, Associate Professor of Law at Fordham University School of Law, BA from Yale in English, MA in Political Science from Duke University, JD from Duke University, National Director of the Sunlight Foundation, Non-Resident Fellow at the Berkman Center for Internet and Society at Harvard Law School, “A Blueprint for a Trust-Busting Biden Presidency”, The New Republic, 12/18/2020, https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting

Just as important, given the precarious political footing of the incoming Biden administration, is the potent electoral appeal of such an agenda—something that FDR also well understood as he instituted federal income supports as the basis for a Democratic governing coalition that spanned generations. Antitrust is one of the few policy arenas in which aggressive action will win Biden the devoted support from the activist left wing of the Democratic Party, while splitting apart and exposing the always unsustainable economic arguments mounted against crony capitalism by self-styled populists on the right. For starters, this realignment of the Democratic Party’s vision of the American political economy would go a long way to help Democrats win the Senate in 2022—a cycle that boasts an unusual number of vulnerable GOP incumbents, weighed down with the dismal Trump-McConnell legacy on Covid relief.

The opportunity that Biden and the Democrats need to seize here stems from the basic fact that antitrust politics is not like other politics. Traditional left and right loyalties simply do not hold within its orbit. The economic populists of the right hate corporate monopolies as much as working-class progressives and immigrant small-business owners do. It’s not for nothing that Ted Cruz keeps yelling about monopolies—or that Trump, when he first campaigned in 2016, and when he was clearly losing in 2020, turned to attacking corporate monopolies. Trump of course reneged on his trust-busting promises, but he understood the rhetorical power of saying that “big media, big money, and big tech” were all against him. On the front lines of Democratic policymaking, meanwhile, a generation’s worth of neoliberal giveaways to these sectors is finally yielding to a new social democratic consensus. In antitrust politics, Amy Klobuchar, Elizabeth Warren, and Bernie Sanders share their anger with Andrew Yang and Scott Galloway—a beloved tech business guru who rooted for Bloomberg.

Within the electorate proper, the depth of the emerging new antitrust consensus is even more striking. One recent poll by Data for Progress showed that 74 percent of Republicans and 80 percent of Democrats are “very concerned” or “somewhat concerned” about monopolies in the U.S. economy. The same survey showed the number of people who support breaking up big tech companies outnumbers those who oppose it by a two-to-one margin, again with no significant Democratic-Republican divide on the question. Indeed, some surveys now show that Republicans are more likely to see tech companies as having too much political power. A Harvard CAPS/Harris survey found similar numbers in 2019, with nearly 70 percent of voters saying that big tech should be subject to antitrust review, and had used market power to gain enormous profits. Almost two-thirds of Americans also told Data for Progress they wanted actions against big tech.

And while big tech soaks up a great deal of attention as the most recent monopoly player on the block, the same trend holds through most major sectors of the U.S. economy—voters see a plague of bigness, and are increasingly clamoring for the federal government to intervene. A 2020 poll by RuralOrganizing.org found that among rural voters, fighting corporate power is a top priority. Sixty-nine percent of the respondents in the survey believed that “a handful of corporate monopolies now run our entire economy.” Almost half said they’d be more likely to support a political leader combating this pattern of top-down concentration and endorsed “a moratorium on factory farms and corporate food and agriculture monopolies.” Opposition to the 2018 Bayer-Monsanto merger reached as high as 93 percent in one poll, with critics citing very sophisticated economic arguments for their opposition. More than 90 percent of respondents, for example, were concerned that the newly merged ag-and-medical giant would “use its dominance in one product to push sales of other products.”

These aren’t the voices of diehard Democrats with a few Republican crossovers, or vice versa. Within traditional political and policy disputes, you don’t see anything close to such openings for trans-partisan accord. In one representative 2020 Hill-HarrisX survey, for instance, 88 percent of Democrats supported Medicare for All, while 46 percent of Republicans did. Antitrust, by contrast, is foundationally bipartisan, interdenominational, cross-cutting—everything Biden said he wanted to be during his general election campaign and in his victory speech. Unlike other well-flogged economic or culture-war issues, antitrust affords an inviting path out of the bitter cul-de-sacs of prevailing political debate. In an age of trench-warfare–style base mobilizations, the antitrust agenda promises something else: a vision of widening opportunities for ordinary citizens, the basic American civic ethos of giving people a fair shot, and a governing plan that could actually unite Republican and Democratic support.

#### Flipping the Senate prevents rogue appeasement and defense cuts

Robert B. Charles 21, J.D. from Columbia University Law School, MA from Oxford University, BA from Dartmouth College, Former Professor of Law at Harvard University’s Extension School, Former Assistant Secretary of State, “The Sun Also Rises: 2022 Elections”, AMAC Magazine, 3/12/2021, http://digitaledition.qwinc.com/publication/?m=40499&i=699518&view=articleBrowser&article\_id=3972169&ver=html5

But here is where the "storyline" (sorry, "narratives" are children's stories) changes. The year 2022 represents a chance for a sharp turn back to normalcy. Americans are sick of lockdowns, lost jobs, and canceled pipelines, drilling, and fracking. They are tired of elites not caring.

They are tired of leaders with constitutional immunity from defamation hammering their free speech. They are tired of left-leaning governors halting worship but allowing riots. They are tired of restrictions on assembly, travel, self-defense, and independence. To borrow from Barbara Stanwyck (friend of Ronald Reagan) in Christmas in Connecticut, "In short, they are tired."

They should be. That is why 2022 matters. America deserves better and can get it. Here is how. The House and Senate could be flipped in 2022, throwing brakes on a runaway power grab.

To date, we have seen more executive orders than in recent history. Efforts continue to curtail the legislative filibuster, permitting any random outrages on majority vote. We see bills like H.R. 1, hoping to unconstitutionally federalize state elections and blunt free speech.

So, what do we know? Midterm elections favor the party that does not hold the White House. This year, Republicans need 10 seats to regain the House, putting Nancy Pelosi in the past. As Biden's approval lags—from job cuts, lockdowns, higher taxes, expensive oil and gas, re-indulging China and Iran, defense cuts, "open borders," and attacks on rights—momentum builds.

Fear of Biden-Harris flipped 15 Democrat seats to Republican in 2020. As safety, security, health, and jobs roil people, a wholesale shift may be in the offing. If 2020 was "Year of the Republican Woman," with a record 26 GOP women in the House, 2022 could see more. Experts note that these women are conservative—and their voices are rising.

Other issues play into 2022, especially censorship. Already, 4.6 percent of 2020 Biden voters say they would NOT have voted Biden if they had known more about Hunter. Biden won by 4.4 percent.

Even when lockdowns lift, socialist Democrat priorities are on track to kill jobs, raise taxes and costs, and restrict rights. Reopening schools is a parental priority, yet Democrats are slowing openings to satisfy teacher unions—that is, their donors.

On the numbers, Republicans have a real shot at regaining control of both chambers, which means hope for core values, defense, free markets, constitutional rights, a family focus, safe streets, secure borders, less regulation, and a shot at returning to what most call normalcy.

In the US House, 15 pickups are discussed, including Reps. Carolyn Bourdeaux (D-Ga.), Andy Kim (D-N.J.), Cheri Bustos (D-lll.), Ron Kind (D- Wis.), Peter DeFazio (D-Ore.), Filemon Vela, Henry Cuellar, Vicente Gonzalez, Colin Allred (D-Texas), Sharice Davids (D-Kan.), Katie Porter (D- CA), Deborah Ross (D-N.C.), John Garamendi (D-Calif.), Stephanie Murphy (D-Fla.), and Carolyn Maloney (D-NY).

Beyond these, two vacancies exist for the late Ron Wright (TX) and Luke Letlow (LA). Biden aims to pull Reps. Marcia Fudge (D-OH) and Cedric Richmond (D-LA) into his administration, bringing possible gains to 19. Again, history cuts for Republicans.

In the US Senate, 34 of 100 seats are up in 2022. Of these, 14 are held by Democrats and 20 by Republicans. While this suggests a challenge, especially since four Republican incumbents are not seeking re-election, Democrat seats in Georgia and Arizona were won by slim margins, and trends put Democrats on defense, with Biden's woeful agenda to defend.

Another harbinger is redistricting. The GOP will control two-thirds of all House seats and the Democrats a tenth, the rest settled by divided states and state commissions. Likely, 117 congressional districts will be drawn by Republican-controlled states, 47 by Democrats, 132 by division or commission. Seven are "at large," covering an entire state.

Perhaps the biggest factor, beyond 75 million voters roiled by 2020 and Biden's stumbling start, is history. Looking back, in 19 of the last 21 midterm cycles, the president's party lost seats in one or both chambers. In 18 of those 19, the president lost seats in both chambers. Only John F. Kennedy and George W. Bush gained seats in their first midterm, the latter after 9/11.

Specifically, FDR lost 81 House seats and seven Senate in his first midterm, Truman lost 45 House and 20 Senate, Ike 18 House and one Senate, Johnson 47 House and four Senate, and Nixon 12 House (picking up two Senate). Ford lost 48 House and five Senate, Carter 15 House and three Senate, and Reagan 26 House (picking up one Senate). Bush 41 lost eight House and one Senate, Clinton 52 House and eight Senate, Obama 63 House and three Senate, and Trump 40 House (picking up two in Senate). So, you see which way the wind blows.

The party in the White House loses big in most midterms—and in both chambers, slowing the president's agenda. The only first-term gains were in the Senate, all four Republicans: Nixon, Reagan, Bush 43 (who gained in both chambers), and Trump.

The message is this: have hope and focus on 2022. Sudden turnabouts are not just for movies and not just for one side. The funny thing is that the sun also rises. Much that is wrong can be corrected.

#### Nuclear war

Grady Means 21, Former Policy Assistant to Vice President Nelson Rockefeller, Retired American Business Executive, and MA in Economics and Engineering from Stanford University, Former Systems Engineer for Northrop Corporation, Former Economist in the Office of the Secretary of the U.S. Department of Health, Education, and Welfare, Founder of SAGE Consulting, Author of MetaCapitalism and Wisdom of the CEO, “Biden Brings The World Closer To Nuclear War”, The Hill, 8/30/2021, https://thehill.com/opinion/white-house/569732-biden-brings-the-world-closer-to-nuclear-war

Over the past six months, the world has edged closer to nuclear war than it has been since the Cuban Missile Crisis. The Doomsday Clock is ticking toward midnight. The global power balance has been dramatically reshuffled, and the potential for disastrous miscalculation hasn't been so high in 80 years. The match and fuse for this is instability — an exaggerated sense of U.S. weakness and lack of capability and resolve — that could lead to huge, aggressive military miscalculations and mistakes by our enemies. The Biden administration has set the table for such a catastrophe.

The timing could not be more dangerous. China has changed strategic direction and has been building its nuclear stockpile and delivery systems. China also has continued to develop hypersonic weapons, including stand-off “carrier killers,” space weapons and cyber capabilities to blind opponents’ strategic and conventional systems. Russia has been advertising (mostly for domestic consumption, but nonetheless worrying) its “unstoppable” delivery systems, and has a very capable nuclear stockpile and military. Iran will continue to move forward with building nuclear weapons. Pakistan and India both have significant nuclear capability in an increasingly unstable part of the world. Nuclear-armed North Korea is again assuming a more belligerent posture. Israel has a full nuclear triad (land, air, subs) to respond to existential aggression. The U.K. and France have significant nuclear deterrents. The world is a powder keg.

In Hollywood terms, today’s capacity for nuclear holocaust is thousands of times greater than the era portrayed in the Armageddon films “On the Beach,” “Fail Safe,” or “Dr. Strangelove.” There would not be anything left for “Mad Max.” Climate disasters may be unfolding over the next hundred years. Nuclear disaster is unfolding now. COVID-19 has killed more Americans than the flu typically does. Nuclear war could kill us all. Our leaders must get their priorities straight.

The danger lies in the growing global perception of weakness and incompetence in the Biden administration, combined with claims of the politicized weakening of the FBI, CIA, State Department and Defense Department. This has crystallized in Secretary of State Antony Blinken’s unsure Anchorage meeting with the Chinese, Biden’s wooden Geneva summit with Russia’s Vladimir Putin, the colossal failure of the Afghan withdrawal, which may devolve into a humiliating hostage crisis for America, and the budget- and inflation-based defunding of Defense. In addition, the fully politicized Intelligence and Armed Services committees on Capitol Hill add to the danger. Our enemies may decide that now is the time to move.

It would be a huge miscalculation.

Catastrophic mistakes at this scale often unfold when isolated events light powder kegs, which then inexorably explode into global conflict.

An incident in Sarajevo lit a powder keg of nationalistic, economic and ambitious personality struggles in Europe to unleash World War I. A century later, possible “Sarajevos” are numerous: China’s overly aggressive and self-confident People’s Liberation Army pushing for the use of military force against Taiwan, calculating a weak and ineffective U.S. response, leading to the sinking of a U.S. carrier and a potential march toward nuclear exchange. Major North Korean aggression against South Korea, or an off-course North Korean missile hitting a Japanese city. A successful Iranian (Hamas, Hezbollah) terrorist attack against an Israeli city. The seizure of one or more Pakistani nuclear weapons systems by a Taliban or another terrorist-linked group. Overt aggression or a “misunderstanding” between Pakistan and India. A “Crimson Tide” communications error. Proof that a devastating bioterror attack was intentional. The list of potential doomsday scenarios is endless.

The one powerful factor holding back such miscalculations has been coherent U.S. foreign policy and resolve, combined with pragmatists in Moscow and Beijing. But in the past six months, the world’s confidence in the U.S. leadership has begun to slip. An agonizing hostage crisis would make it even more dangerous. Added to that is the potential that a stubborn and wounded U.S. administration might overreact to try to show its strength. The U.S. has devastating countermeasures for all enemy strategies, and an enemy underestimating that power, combined with a White House trying to prove itself, could be disastrous.

Some will say it started with Donald Trump. That may be true, but it’s irrelevant, and there is some evidence from China, Russia and North Korea that Trump’s loud, unpredictable behavior kept things far more in check than Joe Biden’s overt weakness and blunders.

In addition, there is no room for “disarmament,” “peace movement” or “the squad” nonsense politics. Today, “treaties” are useful but cannot prevent disaster. The return to safe global strategic balance will require America regaining the world’s respect, and our enemies’ fear. That is the only course to create the strategic balance to avert Armageddon. And it requires full bipartisan support — recent patterns of cynical opportunism have no place when facing these threats.

The only way forward is to fully recognize the growing danger and for this administration to immediately replace the inept National Security Council, State Department, Defense and perhaps intelligence teams with truly capable, first-class, experienced leaders. Most of the current team should go. Global security demands an immediate leadership, strategy, organization and process reset.

### OFF---Topicality---1NC

#### ‘Prohibiting’ a practice requires per se illegality.

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

#### Limits---many standards, requiring distinct answers, make the topic unmanageable.

#### Ground---fringe standards dodge links and allow bidirectional permissiveness.

### OFF---Hospitals---1NC

#### The plan sends a rippling signal of uncertainty that spills into the health sector

Raymond J. Keating 21, Chief Economist for the Small Business & Entrepreneurship Council and Adjunct Professor in the MBA Program at the Townsend School of Business at Dowling College, “Antitrust Fictions (and Actions) Will Have Real, Negative Economic Consequences,” SBE Council, 6/18/2021, https://sbecouncil.org/2021/06/18/antitrust-fictions-and-actions-will-have-real-negative-economic-consequences/

It needs to be understood that while supposedly targeting so-called “Big Tech,” these intrusive regulations and substantial costs would fall on competitors as well, thereby actually discouraging competition in technology markets. For good measure, moving ahead with his kind of hyper-antitrust regulation of tech firms lays the groundwork for doing so in other industries, such as in retail, energy, health and medical sectors, and so on. This is what Senate anti-trust crusaders hope to accomplish.

The message is clear: Beware entrepreneurs, businesses and investors if you become too successful or if you cross certain political constituencies. The government stands ready to punish you via intrusive and costly regulation.

#### That collapses rural hospitals---they’re on the brink AND depend on mergers, but chilled by the threat of antitrust

Ken Kaufman 20, M.B.A. with a Concentration in Hospital Administration from the University of Chicago, Chair of Kaufman, Hall & Associates LLC, “Removing Antitrust Barriers to Solve the Rural Health Care Crisis”, Morning Consult, 1/2/2020, https://morningconsult.com/opinions/removing-antitrust-barriers-solve-rural-health-care-crisis/

Almost 120 rural hospitals have closed since 2010, and an estimated 21 percent of rural hospitals are at high risk of closure.

The high number of financially stressed hospitals is creating a crisis of access for rural communities and a potential crisis of quality and patient safety, as these hospitals struggle to secure sufficient clinical and technological resources. These struggles can be even more difficult in towns that could once support two hospitals but can no longer do so.

A solution to the rural health crisis that promotes partnerships with larger health systems addresses two critical needs. First, it enables a rational, equitable approach to a fundamental restructuring of rural health care resources. Second, it provides access to sufficient financial resources to ensure that rural communities are able to benefit from the same resources available elsewhere.

Antitrust impediments to a system-based approach

Current antitrust law makes it difficult for individual hospitals or health systems to collaborate on efforts to restructure delivery of essential services within a rural health care market. These efforts can, however, be pursued among facilities owned by a single health system, enabling a rational and equitable distribution of services across the health system’s network of facilities and the communities they serve.

The Federal Trade Commission and Department of Justice have themselves acknowledged the value of a system-based approach to rural health. In their 1996 “Statements of Antitrust Enforcement Policy in Health Care,” the agencies created a safe zone for mergers of certain hospitals with a low bed size and low patient census with other hospitals.

The agencies recognized that these hospitals often “will be the only hospital in the relevant market” and that “mergers involving such hospitals are unlikely to reduce competition substantially.” They also recognized that “rural hospitals … are unlikely to achieve the efficiencies that larger hospitals enjoy. Some of these cost-saving efficiencies may be realized … through a merger.”

The situation becomes more difficult when a community has two hospitals that do not fall within the safe zone and it can no longer support both. Such markets will be considered highly concentrated, and an attempt to merge the hospitals likely will be challenged by the federal agencies.

Several states have tried to overcome the likelihood of an antitrust challenge by granting certificates of public advantage to health systems that want to come together to more effectively pool resources and rationalize services within a rural market. But these efforts also are being challenged by the federal agencies.

The threat of antitrust enforcement actions throws a chill over health system-led efforts to make the rural health care delivery system more rational, economically viable and equitable. For example, the systems that combined to form Ballad Health went through a two-year process to secure the COPA that ultimately allowed their merger.

#### Food shocks are immediate

David Alemian 16, Founder of Talent Retention Plans, President of the National Group Insurance Brokers, Degree in Business Administration from Dean College, “Rural Healthcare Is a Matter of National Security”, Medical Economics, 11/8/2016, https://www.medicaleconomics.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.

#### Nuclear war

John Castellaw 17, National Security Lecturer at the University of Tennessee, Founder and CEO of Farmspace Systems LLC, Former President of the Crockett Policy Institute, Retired Lieutenant General in the United States Marine Corps, “Food Security Strategy Is Essential to Our National Security”, Agri-Pulse, 5/1/2017, 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.

## DOJ Advantage

### Turn---1NC

#### Democratic peace is statistically disproven---it’s conflict driving

Dr. Daina Chiba 21, Associate Professor of Political Science in the Department of Government and Public Administration at the University of Macau, Ph.D. in Political Science from Rice University, LL.M in Jurisprudence and International Relations from Hitotsubashi University, and Dr. Erik Gartzke, Professor of Political Science at the University of California, San Diego, PhD in Political Science from the University of Iowa, “Make Two Democracies and Call Me in the Morning: Endogenous Regime Type and the Democratic Peace”, 2/19/2021, https://dainachiba.github.io/research/make2dem/Make2Dem.pdf

The democratic peace—the observation that democracies are less likely to fight each other than are other pairings of states—is one of the most widely acknowledged empirical regularities in international relations. Prominent scholars have even characterized the relationship as an empirical law (Levy 1988; Gleditsch 1992). The discovery of a special peace in liberal dyads stimulated enormous scholarly debate and led to, or reinforced, a number of policy initiatives by various governments and international organizations. Although a broad consensus has emerged among researchers regarding the empirical correlation between joint democracy and peace, disagreement remains as to its logical foundations. Numerous theories have been proposed to account for how democracy produces peace, if only dyadically (e.g., Russett 1993; Rummel 1996; Doyle 1997; Schultz 2001).

At the same time, peace appears likely to foster or maintain democracy (Thompson 1996; James, Solberg, andWolfson 1999). A vast swath of research in political science and economics proposes explanations for the origins of liberal government involving variables such as economic development (Lipset 1959; Burkhart and Lewis-Beck 1994; Przeworski et al. 2000; Acemoglu and Robinson 2006; Epstein et al. 2006) and inequality (Boix 2003), political interests (Downs 1957; Bueno de Mesquita et al. 2003), power hierarchies (Moore 1966; Lake 2009), third party inducements (Pevehouse 2005) or impositions (Peceny 1995; Meernik 1996), geography (Gleditsch 2002b), and natural resource endowments (Ross 2001), to list just a few examples. Each of these putative causes of democracy is also associated with various explanations for international conflict. Indeed, some as yet poorly defined set of canonical factors may contribute both to democracy and to peace, making it look as if the two variables are directly related, even if possibly they are not.

We seek to contribute to this literature, not by proposing yet another theory to explain how democracy vanquishes war, but by estimating the causal effect of joint democracy on the probability of militarized disputes using a quasi-experimental research design. We begin by noting that some of the common causes of democracy and peace may be unobservable, generating an endogenous relationship between the two. Theories of democracy and explanations for peace are at a formative state; it is not possible to utilize detailed, validated and widely accepted models of each of these processes to assess their interaction. Indeed, to a remarkable degree democracy and peace each remain poorly understood and weakly accounted for empirically, despite their central roles in international politics. We address the risk of spurious correlation by applying an instrumental variables approach. Having taken into account possible endogeneity between democracy and peace, we find that joint democracy does not have an independent pacifying effect on interstate conflict. Instead, our findings show that democratic countries are more likely to attack other democracies than are non-democracies. Our results call into question the large body of theory that has been proposed to account for the apparent pacifism of democratic dyads.

### Turn---1NC

#### Existential warming is inevitable AND causes a collapse into extreme authoritarianism---only transitioning from democracy solves

Dr. Chien-Yi Lu 21, PhD and MA in Government from the University of Texas, Austin, Visiting Scholar at Harvard University, Associate Research Fellow at the Institute of European and American Studies of Academia Sinica, Surviving Democracy: Mitigating Climate Change in a Neoliberalized World, Paperback Edition, 12/13/2021, p. 1-2

The fact that the scientific knowledge on the human contribution to climate change entered human society through the most advanced democratic societies should have been a cause for celebration. Given the congruence of climate mitigation and public interests, the problem of climate change should have been considered solved decades ago. Several decades of inaction later, however, arguments are proliferating that democracy is exactly the reason for inaction.

In The Collapse of Western Civilization, historians Naomi Oreskes and Erik Conway travel to the future to look back and offer a forensic analysis on the climate-induced Great Collapse of Western Civilization of 2074 (2014: 63). The future historians’ forensic report states that “[a]s the devastating effects of the Great Collapse began to appear, the nation-states with democratic governments… were at first unwilling and then unable” to deal with the crisis. These democratic governments realized that they had no “infrastructure and organizational ability to quarantine and relocate people” as “food shortages and disease outbreaks spread and sea level[s] rose.” In China, where there was centralized government, the crisis was handled much more adequately, leading to survival rates exceeding 80%, a development that “vindicated the necessity of centralized government” (2014: 51–2). The gist of The Collapse of Western Civilization is not about critiquing democracy per se but a warning against the stubborn inaction mandated by market fundamentalism that has hijacked Western democracies.1 In their previous book, Merchants of Doubt, Oreskes and Conway documented the way that climate deniers sowed the seeds of doubt about climate change and successfully staved off implementations of mitigation measures. For the authors, the anticommunist ideology that had kept actors vigilant about government encroachment in the marketplace occupied a central place in climate denial (2014: 69). Ironically, this sort of ideology-informed calculation meant that preventative action was blocked, increasing the risk that disruptive climate disasters would eventually necessitate the suspension of democracy and legitimating the sort of heavy-handed authoritarian interventions that the conservatives most abhorred (2014: 52; 69).

An appeal to suspend democracy for the sake of survival can be found in The Climate Change Challenge and the Failure of Democracy, where Shearman and Smith argue that liberal democracy is incompatible with the urgent necessity to prevent catastrophic climate change. The vested interests of politicians, corporations, and media lie in continuing with business as usual and in keeping the public ignorant. Instead of bottom-up reforms to improve democracy and bring about sensible climate policies, Shearman and Smith see a transformation into authoritarian regimes as the only responsible way forward when faced with the extreme ecological stress of climate change. They point out that, as Plato foresaw, those in power in a democracy are seldom able to resist the demands of the populace for long, but as a mass, the populace is seldom able to focus on complex problems and to perceive threats that lie over the horizon. Hence, those able to see further—scientists, experts, and the knowledgeable— should be entrusted with steering the course while there is still time to avoid disaster. It is only under a benign authoritarian rule of the knowledgeable that a saner, fairer, and more rational means of weighing social goods against evils can be introduced (Shearman and Smith, 2007).

### Turn---1NC

#### Democracy makes disease control impossible

Zhifa Zhou 21, Associate Professor at the Institute of African Studies at Zhejiang Normal University and Pan Qu, Postgraduate at the Institute of African Studies at Zhejiang Normal University, “The Root Cause of the Failure of American COVID-19 Governance Based on the Criticism of Liberal Democracy From Error-Tolerant Democracy”, Philosophy Study, Volume 11, Number 7, July 2021, https://www.davidpublisher.com/Public/uploads/Contribute/60ff9cfb4589c.pdf

Introduction

Whether liberal democracy contributed to the COVID-19 governance was a hot topic in 2020 (“Democracy and Rise of Authoritarianism in COVID-19 World”, 2020). At the end of January, 2020, when COVID-19 witnessed the lockdown of Wuhan City, the West generally agreed that China lacked freedom of speech and the inertia of a rigid bureaucratic structure, and the national censorship system kept the whistle blower Dr. Wenliang Li silent, which led to the disease out of control (Mérieau, 2020). Democracies’ confidence mainly came from Amartya Sen’s research on the famine. Sen (1999) has claimed that no substantial famine has ever occurred in any independent and democratic country with a relatively free press and there is no exception to this rule. Citizens in democracies can expect governments to be more candid, transparent, and responsible in dealing with all kinds of crises, which authoritarian countries usually cannot (Berengaut, 2020; Bollyky & Kickbusch, 2020). So Steve Bloomfield (2020) has regarded that if China had a free press and transparent government, the pandemic could be brought under control before the outbreak. In conclusion, freedom plus democracy equals the COVID-19 antidote according to Western standards, although Wilson and Wisongye have found that social media rumors can exploit the right to freedom of speech and erode people’s health benefits (New York Times, 2021; Bollyky & Kickbusch, 2020). However, since March, 2020, with Western democracies seriously affected by COVID-19, their superiority of the political system has begun to expose its untrue and fatal defects. Especially when Wuhan began to lift its blockade on April 8, 2020 (People.cn, 2020), scholars and journalists began to question whether democracies had the ability to deal with the crisis better than China (Mérieau, 2020). Liberal democracy in the United States has not proved that it is more conducive to the COVID-19 governance than authoritarianism since 2020. From a global perspective, not only do most democracies fail to contain the spread of COVID-19, but almost all of the 10 most affected countries are liberal democracies (Coronavirus Resource Center, 2021). Their policy responses have a poor effect in reducing the death toll in early stages of the crisis, as shown that democratic political institutions may be at a disadvantage in responding quickly to COVID-19 (Cepaluni, Dorsch, & Branyiczki, 2020). More surprising is that the COVID-19 pandemic is so serious in the United States, yet no government officials have been removed from office because of their inactivity in fighting against the corona-virus. People doubt whether American accountability mechanism is still working. However, two impeachments against President Trump indicate that it seems to function quite well (Valenta & Valenta, 2017; Herb, Raju, Fox, & Mattingly, 2021). The direct loss to the United States caused by Russiagate and incitement of insurrection is far less than the pain caused by the failure of the COVID-19 governance, but no any official in the United States is responsible for it. If it again faces infectious diseases similar to COVID-19, will it repeat this unprecedented tragedy? Can liberal democracy and the separation and balance of powers push American president to act more aggressively? Error-tolerantism explains that the fundamental reason for the failure of American COVID-19 governance is a serious misunderstanding of the concept of freedom (Zhou, 2018; 2019; Zhou, Tan, & Liu, 2020). Liberalism has witnessed a rare scene: In the context of COVID-19, the president, governors, magistrates, and the public (Emery, Schwebke, & Park, 2020; Sullum, 2020; Behrmann, 2020; Kenton, 2020; Strano, 2020) have severe misunderstanding of freedom that cost more than American 600,000 lives (Coronavirus Resource Center, 2021).

In response to the above phenomenon, error-tolerantism as the development of liberalism defines liberty from a new perspective and shows a stronger explanatory power than liberalism (Zhou et al., 2020). The right paradigm of error-tolerantism, the right to be wrong (right to trial and error) as an original right and mutual empowerment theory, instead of natural rights theory and social contract theory, divides liberty into the right to liberty in innovative fields, right to be wrong as an original right, and the right to be right in non-innovative fields as sub-rights. The lockdown of Wuhan means that Chinese government has excised the power to be wrong as an original power, but the West criticized it with the right to liberty at the level of sub-rights, which is the first error in understanding liberty during American COVID-19 governance; after Wuhan effectively controlled COVID-19, its governance has transformed from an innovative field to a non-innovative one. Then, liberties in non-innovative fields as the sub-rights level, such as wearing face masks, keeping social distancing, showing health codes, are formed definitely (Zhou et al., 2020). However, wearing masks has been regarded as a sign of political oppression rather than a simple hygienic measure by the United States (Kahanel, 2021). Since liberalism has a major misunderstanding of the concept of liberty, liberal democracy based on the philosophy of liberalism should be deeply reflected or even reconstructed, and it is very reasonable for error-tolerant democracy constructed based on error-tolerantism to explore the defects of liberal democracy in American COVID-19 governance. Therefore, we first review scholars’ relevant research on American democracy and the COVID-19 governance, and then based on the theory of error-tolerant democracy, discuss the defects of liberal democracy and American political system that are unable to cope with the crisis of the century.

#### Future pandemics are inevitable---extinction

Dr. Matt Boyd 21, Research Director at Adapt Research Ltd, PhD in Philosophy of Evolution & Cognition from the Victoria University of Wellington, BA from Massey University, and Nick Wilson, Research Professor in the Department of Public Health at the University of Otago, “Optimizing Island Refuges Against global Catastrophic and Existential Biological Threats: Priorities and Preparations”, Risk Analysis: An International Journal, Wiley Online Library

1 INTRODUCTION

Our world is vulnerable to global catastrophic risks (GCRs) or existential risks (Bostrom, 2019; Ord, 2020). GCRs are so disastrous because they affect one or more systems critical to humanity, and spread to affect the entire planet (Avin et al., 2018). Existential risks threaten to eliminate humanity or permanently curtail its potential (Ord, 2020). Some of these risks are natural, for example asteroid or comet impact, supervolcanic eruption, naturally occurring pandemic, or various cosmic events (Bostrom & Cirkovic, 2008; Ord, 2020). Many others are the result of human activities, for example nuclear war, anthropogenic climate change, nonaligned artificial intelligence, engineered biological threats, geoengineering, or inescapable totalitarianism (Bostrom & Cirkovic, 2008; Ord, 2020).

There are three phases to an existential catastrophe: origin, scale up, and reaching every last human (Cotton-Barratt, Daniel, & Sandberg, 2020). Following any near miss, there would be a period where recovery of humanity's long-term potential may or may not be realized (Baum et al., 2019). Failure to anticipate or mitigate these threats risks undesirable trajectories for human civilization (Baum et al., 2019).

In addition to the present generation's obvious self-interest in continuing to exist, the perspective of long-termism suggests that humanity ought to mitigate these risks due to the potential immense value of future human generations (Beckstead, 2013), a desire to see aspects of the human project continue across time and perhaps the universe (Bostrom, 2003; Scheffler, 2013), and the potential cosmic significance of preserving intelligent life on Earth (Ord, 2020). A number of philosophical defenses of long-termism have been published (Beckstead, 2013; Greaves & MacAskill, 2019). Importantly, these long-term outcomes are largely under human control because most of the risk is probably anthropogenic (Beard & Torres, 2020; Ord, 2020).

1.1 Mitigating Existential Threats

It is too simplistic to think of existential risks as mere causes that are followed by a sequence of effects. We should think of risks as the product of hazards, vulnerabilities, and exposures (Liu, Lauta, & Maas, 2018). Hazards are the precipitating cause of a catastrophe, vulnerabilities are the inability of critical systems to withstand hazards, and exposures are the features of human society that turn this system damage into harm to populations (Beard & Torres, 2020). Mitigation of existential threats involves preventing their emergence, responding if the threat spreads, and building resilience so the threat does not lead to the death of every last human or leave humanity with permanently curtailed prospects (Cotton-Barratt et al., 2020). After a threat has passed, there may also be a series of limiters that might prevent the reemergence of a flourishing humanity (Baum et al., 2019). One such limiting factor could be the loss of technological society and know-how.

In order to achieve immunity from existential threat, humanity will need a period where it preserves its potential and protects itself from risks (Ord, 2020). Various methods have been proposed to address vulnerabilities and hence shift the probability of existential risk. These suggestions include: improved international focus, governance, and cooperation such as through the United Nations (Boyd & Wilson, 2020), imitating existing frameworks such as the Sendai framework for disaster risk reduction (Avin et al., 2018), achieving the United Nations Sustainable Development Goals (Cernev & Fenner, 2020), or extreme surveillance for threats (Bostrom, 2019). Toby Ord lists 38 specific measures across eight existential threats, and an additional 12 avenues to explore that address risks in general terms (Ord, 2020).

1.2 Biological Threats

Pandemic viruses with high case fatality could potentially infect a majority of the population. Deliberate biological events (DBEs) have occurred before (Millet & Snyder-Beattie, 2017a), will likely occur again, and could pose a threat to humans as great as nuclear war (Kosal, 2020). New technologies such as artificial intelligence could amplify biothreats in a number of ways (O'Brien & Nelson, 2020). These risks are increased because the Biological Weapons Convention (BWC) has no verification system (Dando, 2016), and has been violated in the past (Gronvall, 2018). It would only take one unanticipated or accidental event for a bioweapon (or laboratory accident) to become a catastrophic threat. The U.S. National Academies of Sciences specifically warns against synthetic biology and xenobiology (Gomez-Tatay & Hernandez-Andreu, 2019) and it is argued that a state-sponsored bioweapon attack is the greatest current threat (Sandberg & Nelson, 2020). See the Supporting Information for further details on biological threats. Global preparedness through the One Health approach, global health security projects, and the need to integrate health and the GCR field (Millet & Snyder-Beattie, 2017b) are important. But as the COVID-19 pandemic has shown, there may be important overlooked aspects or misunderstood risks that could make any suite of general preparation inadequate. Therefore, last lines of defense may be required, such as refuges.

### Turn---1NC

#### Democracy causes Nigerian state collapse and civil war

Dr. Moses E. Ochonu 19, Cornelius Vanderbilt Chair in History and Professor of African History at Vanderbilt University, PhD and MA in African History from the University of Michigan, BA in History from Bayero University, Graduate Certificate in Conflict Management from Liscomb University, “Why Liberal Democracy is a Threat to Nigeria’s Stability”, Logos: A Journal of Modern Society & Culture, May 2019, http://logosjournal.com/2019/liberal-democracy-is-a-threat-to-nigerias-stability/

In 2015, Nigeria, a country of about 190 million, spent $625 million to conduct federal and local elections. By comparison, India, with a population of 1.2 billion, spent $600 million on its 2015 election, according to figures released by the Electoral Commission of India (ECI).[1]

In 2019, the election budget of Nigeria’s Independent Electoral Commission (INEC) rose to $670 million. This represents about 2.5 percent of Nigeria’s $28.8 billion budget for 2019, a portion of which is being financed through borrowing. To put the electoral spending in context, more than half of the country subsists on about a dollar a day, and the country recently acquired the dubious distinction of being named the poverty capital of the world, with more people living in extreme poverty there than in any other country.[2] Key infrastructures and services such as roads, railway, electricity, water supply, healthcare, and education are severely inadequate, requiring urgent investments and interventions.

Election-related expenditure is expected to rise in the near future as INEC implements a wider slate of digital technologies to combat manipulation and improve the integrity of the electoral process. For comparison, Nigeria typically devotes about 7 percent of its budget to education. And yet Nigeria continues to maintain a four-year election cycle, with smaller by-elections occurring in between. This electoral calendar guarantees that about $1 billion is spent on elections every four years. As the electoral price tag has grown, democratic dividends have plummeted.

Nigeria’s predicament is a microcosm of the phenomenon of rising financial costs of elections in Africa and diminishing returns on democracy. Across the continent, the cost of electoral democracy is increasing and threatens the delivery of social goods. As African countries battle myriad socioeconomic challenges, the question needs to posed: is it wise for these countries to continue to spend a large percentage of their revenue every four or five years on a political ritual with fewer and fewer positive socioeconomic consequences for their populations? Is this expensive, periodic democratic ritual called election worth its price?

It is not only the monetary cost of elections that now threatens to defeat their purpose and engender disillusionment and, along with disillusionment, the erosion of trust in the state and its ability to produce and distribute public goods. The social cost of periodic elections has been arguably greater, depleting, with each election cycle, the residual stability of the state and the credibility of its institutions.

Elections conducted in Nigeria since the return of civilian rule in 1999 have brought with them anxiety, tension, death, violence, and dangerous rhetoric that, taken together, have frayed the national political and social fabric. Elections have widened fissures and intensified preexisting primordial cleavages.

I can recall no electoral cycle since at least 2003 that was not been accompanied by fears of Nigeria’s disintegration or at the very least the acceleration of its demise. In 2007 and 2011, post-election violence claimed hundreds of lives in Northern Nigeria as supporters of then candidate Muhammadu Buhari rioted after his loss. In the 2019 presidential and national assembly elections, at least 46 people were reported to have died from election-related violence. In the state assembly and governorship elections two weeks later on March 9, 2019, another 10 people died across five states in what the Sunday Tribune newspaper described in its headline as “another bloody election.”[3]

Two riders below the same Sunday Tribune headline encapsulate the turbulent character of Nigerian elections. One was “Thugs, vote buyers, arsonists take over on election day”; the other was “Nigerians condemn militarization of elections in Rivers, Bayelsa, Kwara, Akwa Ibom, Benue,” a reference to the government’s deployment of soldiers and other military assets to opposition strongholds before and during the election. The involvement of soldiers and other military personnel in the election was a brazen violation of Nigeria’s Electoral Act, an action which many observers interpreted as the incumbent administration’s effort to use its might to manipulate the election in states held by the opposition.

Every election cycle in Nigeria sees massive, fear-induced demographic mobility as members of different ethnic groups and religions relocate to areas considered dominated by their kinsmen and co-religionists to await the conclusion of elections that often degenerate into communal clashes especially in the volatile north of the country.

Periodic national elections have thus worsened Nigeria’s notoriously frail union and caused apathy and discontent. The Nigerian people, the major stakeholders in Nigeria’s democracy, have grown weary of being periodically endangered and rendered pawns in an elaborate elite ritual with little or no consequence for their lives.

Electoral aftermaths have not improved economic conditions or strengthened the capacity of citizens to hold elected leaders accountable. Moreover, as I shall discuss shortly, the familiar abstract freedoms that democracy, lubricated by periodic elections, can confer on citizens who participate in such exercises, have eluded Nigerians.

The result has been noticeable apathy represented most poignantly by voter turnout, which declined from a peak of 69.1 percent in 2003 to 46.3 percent in 2015 and to about 35 percent in 2019. In the same 2019 election cycle, turnout declined to less than 20 percent in the governorship and state assembly elections, with many Nigerians on social media stating that they had lost faith in the electoral process and that the official results of the presidential elections two weeks earlier had shown that their votes would not count towards the declared outcome.

Voter apathy alone is not an indication of democratic disillusionment but it can portend or indicate something more devastating: diminishing trust in the state, its institutions, and its processes.

Such a trust deficit exists already and it predated the return of civilian rule in 1999 after about two decades of military dictatorship. However, by all theoretical formulations, such a cumulative loss of confidence in the transactional sociopolitical contract between the state and citizens should be corrected by the democratic ideals of voting, representation, and accountability. This has not happened in Nigeria. In fact, the opposite scenario is visible: a negative correlation between successive electoral cycles and citizens’ trust in the Nigerian state. Therein lay the paradoxical consequences of democratic practice in Nigeria.

If elections are increasingly burdensome as they have become in Nigeria, the corrective potential of democracy, broadly speaking, is lost. Citizens consequently lose faith in the state and resort to self-help, including criminal self-help. That is how states collapse. Nigeria is not far off this possibility.

In Nigeria, recent political realities reveal a blind spot of pro-democracy advocacy: without the modulating effect of decentralization, sustained economic growth, a growing, secure middle class, and a literate, hopeful poor, liberal democracy can do and has done more damage than good. Liberal democracy has ironically become both an incubator and protector of mediocrity, corruption, and bad governance. The overarching casualty has been Nigeria’s very stability.

#### Nigerian instability escalates to global great power war

Charles A. Ray 21, Member of the Board of Trustees and Chair of the Africa Program at the Foreign Policy Research Institute, Former U.S. Ambassador to the Kingdom of Cambodia and the Republic of Zimbabwe, “Does Africa Matter to the United States?”, Foreign Policy Research Institute, 1/11/2021, https://www.fpri.org/article/2021/01/does-africa-matter-to-the-united-states/

Africa matters in terms of size, population, and rate of population growth. It is the continent currently most affected by climate change but is also a continent that can have a devastating impact on climate change globally because of the importance of the Congo Basin rainforest, which is the second-largest absorber of heat after the Amazon rainforest. The destruction of this important ecosystem could further accelerate global warming. As residents of the region come into increasing contact with the animals of the rainforest, this region could be the origin of the world’s next viral pandemic. Violent extremism and terrorism are increasing in Africa, and while now mostly localized, the danger has the potential to spread beyond the continent. Crises—natural and man-made—cause massive relocations of populations, both on the continent and abroad, which can have negative economic, social, and political impacts.

Why Africa Matters

The African continent is the world’s second-largest, with the second-fastest growth rate after Asia. With 54 sovereign countries, four territories, and two de facto independent states with little international recognition, the continent has a current population of 1.3 billion. By 2050, the continent’s population is predicted to rise to 2.4 billion. By 2100, Nigeria, Africa’s most populous country, will have a population of one billion, and half the world’s population growth will be in Africa by then.

The population of African countries is also overwhelmingly young. Approximately 40% of Africans are under 15, and, in some countries, over 50% is under 25. By 2050, two of every five children born in the world will be in Africa, and the continent’s population is expected to triple. These developments have positive and negative potential impacts on the United States and the rest of the world. Young Africans have, for the most part, completely skipped the analog age and gone directly digital. Comfortable with technology, they form a huge potential consumer and labor market. If, on the other hand, the countries of Africa fail to develop economically and do not create gainful employment for this young population, then there is the risk that they will become a huge potential source of recruits to extremist and terrorist movements, which currently target disadvantaged and disenchanted youth.

Lack of economic opportunity, increased urbanization, and climate-fueled disasters will also contribute to movement of people seeking better lives, which will impact economies and security not only on the continent of Africa, but also the economic and security situations around the world. Nations, lacking adequate critical infrastructure, education, and job opportunities are ripe for internal unrest and radicalization. In particular, inadequate health delivery systems, when coupled with natural disasters, such as droughts or floods that limit food production, cause famine and mass movements of populations.

The Challenges for U.S. Policy

Prior to World War II, the U.S. policy towards Africa was not as active as it was toward Europe, Asia, or Latin America. During the Cold War, Africa policy was primarily viewed from a perspective of super-power competition. The end of the Cold War and the rise of international terrorism introduced this as a major component in U.S. Africa policy along with competition with a rising China and increased Chinese engagement in Africa.

Before his first official trip to Kenya, U.S. President Barack Obama said, “Africa had become an idea more than an actual place . . . with the benefit of distance, we engaged Africa in a selective embrace.” This is probably an apt description of U.S. policy towards African nations despite the bipartisan nature of that policy. The United States, with the many domestic and international issues it has to cope with, can ill afford to continue to ignore Africa. Going forward, U.S. policy must include a hard-headed look at where Africa fits in policy priorities.

The incoming Biden administration will face a number of important issues and challenges as it develops its Africa policy. The most pressing issues are the following:

Climate Change: Climate change is an existential problem that affects the entire globe, but Africa has probably suffered more from the effects of climate change than other continents—and the problem will only get worse with time. In an October 2020 article, World Meteorological Organization (WMO) Secretary-General Petteri Taalas said,

Climate change is having a growing impact on the African continent, hitting the most vulnerable hardest, and contributing to food insecurity, population displacement and stress on water resources. In recent months we have seen devastating floods, an invasion of desert locusts and now face the looming specter of drought because of a La Nina event. The human and economic toll has been aggravated by the COVID-19 pandemic.

Climate change impacts water quality and availability, and millions in Africa will likely face persistent increased water stress due to these impacts. A multi-year drought in parts of South Africa, for instance, threatened total water failure in several small towns and had livestock farmers facing financial ruin. Another pressing climate-change issue is the need for protection of the Congo Basin rainforest. This 178-million-hectare rainforest is the world’s second largest after the Amazon and is currently threatened by agricultural activities in Cameroon, Central African Republic, Democratic Republic of Congo, Republic of the Congo, Equatorial Guinea, and Gabon. Countries in the Congo Basin need to address the preservation issue, while also enabling sustainable agricultural activities to ensure food security for the region’s population. In addition to the impact on global climate caused by destruction of the rainforest, such destruction also brings human populations into closer contact with the region’s animals, creating the risk of future animal-to-human transmission of new and possibly more virulent viruses similar to COVID-19, which will have a global impact. In a January 2021 CNN report, Dr. Jean-Jacques Muyembe Tamfum, who as a researcher helped discover the Ebola virus in 1976, warned of possible new pathogens that could be as infectious as COVID-19 and as virulent as Ebola.

Rule of Law/Mitigation of Corruption: A key to African development, given the increasing urbanization, population increases, and youthfulness of the continent’s population, will be an increase in domestic and international investment to build the industries that can provide meaningful employment and improved standards of living. In order for this to be successful, African nations will need to address the issues of rule of law and corruption. Investors will not risk money if the business climate comes with a level of political risk that is too high. Government leaders throughout Africa need to establish legislation that provides an acceptable level of security for investments and take action to curb the endemic corruption that currently discourages investment. Corruption in Africa ranges from wholesale political corruption on the scale of General Sani Abachi’s looting of $3-5 billion of state money during his five years as Nigeria’s military ruler to the bribes paid by businessmen to police and customs officials. The “tradition” of having to pay bribes, or “sweeteners,” drives away domestic investment and scares away foreign investment, leaving many countries mired in poverty.

Violent Extremism and Terrorism: A number of African nations are currently plagued with rising extremist movements. While primarily a domestic issue, the mass movement of people fleeing violence and the disruption of economic activity have the potential to negatively impact the rest of the world. African nations need regional responses to curb extremist and terrorist organizations, many of which are supported by international terrorist organizations, such as ISIS and al Qaeda. In addition, the underlying conditions that helped to create these movements must be addressed. Terrorist groups in Africa range from relatively large and dangerous groups, such as Boko Haram, a group in Nigeria that has received support from al Qaeda and that aims to implement sharia law in the country; Al-Shabab, an al Qaeda affiliate aiming to overthrow the government in Somalia and to punish neighboring countries for their support of the Somali regime; and Uganda’s Lord’s Resistance Army, a fundamentalist Christian group. Terrorist groups in the fragile political climate of Libya also pose a threat to sub-Saharan Africa.

Great Power Competition: As the world’s second-largest economy, and with its increasing participation in international activities, China will continue to be a factor in Africa for the foreseeable future. This, however, is more a problem for the nations of Africa than it is for the rest of the world. The West can compete best by outperforming China in areas of strength by providing those goods and services that are unquestionably superior, and let African governments decide how to deal with China and its often-predatory lending practices and the Chinese tendency to import Chinese workers for its projects and investments rather than hiring locals. At the same time, Russia, which did not completely turn away from Africa at the end of the Cold War as many in the West sometimes believe, must still be considered a significant factor on the African landscape. In an effort to compensate for Western sanctions and to counter U.S. and Western influence, Russia is once again increasing its presence on the continent. Russian mercenaries, in exchange for diamond mining rights, have trained military forces in the Central African Republic, raising concerns about human rights abuses. Of particular concern is the presence of the Wagner Group, a private military company associated with Yevgeny Progozhin, a Russian oligarch with close ties to Vladimir Putin, who was indicted in the United States for trying to disrupt the 2016 U.S. elections. To date, Russia has, in addition to seeking basing rights, signed military cooperation agreements with 28 African nations. Russian activity is a combination of military and commercial, with Progozhin at the center of both. From 2010 to 2018, Russia nearly tripled its trade with African countries. While the activities of both Russia and China in Africa are of concern, and should be closely monitored, neither is of critical importance to U.S. national security.

With climate change, disease outbreaks, famine, extremism, and inter-ethnic violence, Africa will still experience crises in the foreseeable future that will be beyond the capacity of most nations on the continent to deal with. Climate change is probably the greatest cause of humanitarian crises in Africa, but mainstream media outside the continent either fail to notice or under-report them. Some of the crises, like Ebola or the next viral infection, can impact the rest of the world. These crises will cause starvation, mass movement of people, and increase internal and regional instability. Africa matters to the United States and the rest of the world. Its impacts can be felt far beyond the continent’s borders, but if approached as a partner rather than as a patron—with a focus on assisting African nations to improve governance, build critical infrastructure, boost domestic economies, and provide essential services to all—then Africa can be a positive contributor on the global stage.

## Inflation

### Inflation---1NC

#### 1---Tacit collusion has minimal effects on COVID---supply chains are the main reason which the plan doesn’t fix

#### 2---Inflation is low and transitory

Dr. Alan S. Blinder 12-29, Professor of Economics and Public Affairs at Princeton University, Former Vice Chairman of the Federal Reserve, 1994-96, “When It Comes to Inflation, I’m Still on Team Transitory”, Wall Street Journal, 12/29/2021, https://www.wsj.com/articles/when-it-comes-to-inflation-im-still-on-team-transitory-price-index-pce-goods-supply-chain-logistics-federal-reserve-interest-rates-116408070291

Inflation was a Grinch this Christmas. Economists on Team Transitory, myself included, should admit that we never thought inflation would go this high. What happened? Does high inflation still look transitory?

First, the startlingly high 6.8% inflation rate reported by the consumer-price index over the past year exaggerates the problem. A better measure, the one on which the Federal Reserve focuses, is called the deflator for core personal-consumption expenditures, or core PCE. This price index excludes food and energy, because they are so volatile and far beyond the Fed’s control. It registered a 4.7% inflation rate over the past year.

So yes, we have an inflation problem. But 4.7% inflation is a smaller problem than 6.8% inflation. The question remains: How did we get here?

The old aphorism that inflation arises from “too much money chasing too few goods” is close, but “too much demand chasing too little supply” is spot on. Demand has surged as the economy leapt out of its terrible pandemic slump, but supply hasn’t been able to keep up because of various bottlenecks and shortages.

The U.S. government threw big lifelines to needy families in March 2020 and March 2021. Large transfer payments helped families muddle through and maintain their spending. The Federal Reserve chipped in with hyper-expansionary monetary policy, which helped revive the auto industry and contributed to the housing boom.

Those fiscal and monetary policies, though imperfect, were wise. Without them our economy would have fallen into a much deeper and longer recession—maybe even into deflation. But these measures were temporary. There won’t be large fiscal expansion in March 2022, regardless of what happens to President Biden’s Build Back Better plan. And the Fed is now taking its foot off the monetary accelerator.

Turning to supply, Covid fears shifted consumer spending away from services, many of which require close personal contact, toward goods, which come to us safely in boxes. But packages must be transported by trucks and, if they originate overseas, travel in container ships and be unloaded at ports. Strained container capacity, clogged ports, and a shortage of truckers have resulted in too little supply.

In short, there is an inflationary price to pay when you catapult rapidly out of a pandemic-induced recession, and we are paying that price now. But it still looks transitory to me—though that doesn’t mean it will be over in a month or two. It won’t, which is presumably why Federal Reserve Chairman Jerome Powell recently stopped using the word.

Several factors point to lower inflation rates ahead. First, the price of crude oil, which more than doubled between November 2020 and October 2021, has begun to fall. Second, normal consumption patterns will re-emerge as pandemic fears subside. Consumers will start buying more restaurant meals, hotel rooms and movie tickets—and fewer things that are shipped in boxes. Omicron may delay the return to normalcy, but it will happen. Third, capitalism is on our side. Shortages raise prices, but high prices create opportunities for profit, which attract capitalists to alleviate the shortages. They don’t do this out of altruism, but out of self-interest.

The process takes time, however—time to increase semiconductor manufacturing capacity, time to get more trucks on the road, time to enhance port capacity and so on. Bottleneck inflation may be gone in a few months, or it may take another year or so. You can call another year of high inflation “transitory” or “terrible.” But it isn’t likely to be permanent, which is why I’m still on Team Transitory.

### Renewables High---1NC

#### 1---No Internal Link---inflation affects renewables and fossil fuels, so they’re won’t be a transition

#### 2---Renewables are strong and growing

Dawn Lippert 8-27, CEO of Elemental Excelerator, Board Member of Climate Real Impact Solutions II, Director of Innovation and Community at Emerson Collective, and Aimee Barnes, Director of Elemental’s Policy Lab, Former Senior Advisor on Climate Change to Former California Gov. Jerry Brown, “Congress's Once-In-A-Generation Opportunity To Support Cleantech Innovation”, The Hill, 8/27/2021, https://thehill.com/opinion/technology/569703-congress-has-a-once-in-a-generation-opportunity-to-support-cleantech

The good news is that the energy and climate technology market is the strongest it has ever been. Cleantech investment is growing five times faster than the average growth of venture capital. In 2020, more than $4 billion of new funds were formed for the climate venture capital market, and growth is expected to accelerate this year. Climate and cleantech present a $3.5 trillion economic opportunity annually over the next 30 years, and early-stage venture capital for climate-focused companies increased 3,750 percent from 2013 to 2019.

### Populism Defense---1NC

#### Diamond is alarmist nonsense

Scott Mendel 21, Mendel Media Group, “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency”, Publisher’s Weekly, https://www.publishersweekly.com/978-0-525-56062-3

Democracy is withering around the globe, including in the White House, according to this overwrought jeremiad. Diamond (The Spirit of Democracy), a Stanford political scientist and Hoover Institution fellow, lays out his worries about trends in fragile democracies, including right-wing populism in Eastern Europe, creeping authoritarianism in Turkey, corruption in Angola, and declining political civility, moderation, and tolerance everywhere. His emphasis, though, is on Russia’s manipulation of social media to sway foreign elections, China’s influencing of other countries through investments and charitable gifts, and President Trump, whose “mental and moral unfitness,” “lack of impulse control,” and “overflowing vengeance” constitute an “unprecedented” menace to democracy. Diamond’s case against these three culprits is exaggerated and weakly argued. His agenda for reform includes international initiatives to support pro-democracy activists and journalists, nonpartisan redistricting, and censorship by social media platforms to counteract “their radical democratizing of information,” which he paradoxically terms “a threat to democracy” because it “remov[es] editorial filters and standards, thus enabling anyone, anywhere to act as a journalist.” Diamond’s scattershot analysis of democracy’s discontents is marred by alarmism; readers who don’t share his views already will likely not be swayed.

### Grid Defense---1NC

#### Transition collapses stability

Bernard Weinstein 19, Associate Director of the Maguire Energy Institute and an Adjunct Professor of Business Economics in the Cox School of Business at Southern Methodist University in Dallas, “RENEWABLES PUSH UNDERMINES POWER GRID SERVING 65 MILLION”, <https://www.heartland.org/news-opinion/news/renewables-push-undermines-power-grid-serving-65-million>, April 25th, JAA

Despite government mandates and massive taxpayer subsidies, wind and solar power account for only about 5 percent of U.S. electricity generation. Calls for even more reliance on renewables and even natural gas pose serious challenges to grid stability and reliability. Wind and solar will not completely replace conventional power sources anytime soon. They are great when the wind is blowing and the sun is shining, but this is not always the case. Because large-scale battery storage at a reasonable cost is not yet on the horizon, utilities have to invest heavily in backup generation, typically provided by natural gas peaking plants—power plants that are idle most of the time and are only brought online during periods of unusually high electric power demand. Wind and solar in their current forms cannot make up for the loss of coal- and nuclear-generated power. And if federal and state subsidies to renewables are reduced, the attractiveness of wind and solar investments is likely to diminish substantially. Right now, domestic gas is cheap and abundant, but that won’t always be the case. A global market for natural gas is emerging, and the United States is becoming a major player. America is projected to become the world’s second-largest exporter of liquefied natural gas within a few years. A decade from now, natural gas prices will be at least 50 percent higher than they are today, making gas-fired power generation a more expensive proposition, according to a recent forecast by the World Bank. Valuing a Constant Power Supply Unlike renewables and natural gas peaking units, coal and nuclear plants are “always on,” so the loss of this baseload power is the most serious threat to power grid integrity. Unfortunately, some system operators are not assigning value to the resiliency attributes of the baseload plants providing power to their grids. Such is the case with PJM, the nation’s largest regional transmission operator, which provides electricity to 65 million people in 13 Eastern and Midwestern states and the District of Columbia. In an unusual move, senior executives of four utilities that rely on PJM to transmit their power—Public Service Enterprise Group, Exelon Corporation, FirstEnergy Corporation, and Duke Energy—recently sent a letter to the grid operator imploring PJM to adopt market reforms recognizing the importance of their coal and nuclear plants in ensuring grid resiliency and reliability. They argue pricing in the wholesale market, which may be based on the marginal cost of natural gas or the feed-in tariffs of renewables, is not adequately compensating utilities for the reliability of their baseload power plants. These utilities also want PJM to recognize the importance of fuel diversity for grid reliability and the potential risks to the grid from premature retirements of coal and nuclear power plants. All power grids, for that matter, must adopt pricing mechanisms sufficient to ensure fuel diversity and an adequate reserve margin. Otherwise, the nation’s system operators will be unprepared for heat waves, polar vortices, spikes in natural gas prices, cyberattacks, and other disruptive events.

# 2NC

## States Counterplan

### Solvency---2NC

#### State law substitutes for federal enforcement

Randy Stutz 20, Vice President of Legal Advocacy at the American Antitrust Institute, Kathleen Foote, Antitrust Chief at the California Department Of Justice, and Phil Weiser, Hatfield Professor of Law and Telecommunications, and Executive Director and Founder of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, JD from New York University School of Law, Colorado Attorney General, “The State of State Antitrust Enforcement – Playing a Critical Role Locally and Nationally”, American Antitrust Institute ‘Ruled By Reason’ Podcast, 6/22/2020, Transcribed by Otter.ai, Grammar Edits by Casey Harrigan, https://www.antitrustinstitute.org/work-product/the-state-of-state-antitrust-enforcement-playing-a-critical-role-locally-and-nationally/

STUTZ: Hello, I'm Randy Stutz, the Vice President of Legal Advocacy at the American Antitrust Institute. In this episode of AAI’s *Ruled by Reason* Podcast, we're going to discuss the state of state antitrust enforcement in troubled times when the federal government is either unable or unwilling to adequately enforce the antitrust laws. Fortunately, the US system has an emergency preparedness plan. We have 50 state attorneys general who enforce federal antitrust law as well as their own state antitrust laws. And, in the words of this US Supreme Court, they are ‘an integral part of the Congressional plan for protecting competition’. We're going talk today about some important current state enforcement and legislative initiatives, some recent dust ups among state and federal enforcers over antitrust federalism principle, and how the states are thinking about and responding to the COVID-19 crisis from an antitrust and competition policy perspective. To do that, we are very fortunate to have two eminent leaders from the antitrust community and longtime champions of strong state level antitrust enforcement. Phil Wiser, is currently serving as the 39th Attorney General in the state of Colorado, where he was sworn in in January of 2019. And I have a hard time imagining that any of Phil's 38 predecessors brought anywhere near his level of antitrust expertise to the position. Prior to winning election, Phil served as dean of the University of Colorado Law School, where he also taught antitrust law and founded the law school silicon flat iron Center for Law, technology and entrepreneurship. Before that, Phil served in the Obama and Clinton administration in the White House and Justice Department, and he's also authored numerous books and articles on competition, innovation, and internet and telecom policy. as attorney general Phil sits on numerous standing and special committees of the National Association of attorneys general, and co chairs the antitrust committee, with the Attorney General of my home state Brian frosh of Maryland. Bill, thank you so much for being here. Good to be with you. Kathleen Foote is the senior Assistant Attorney General and antitrust chief in the California Department of Justice, where she has served for 32 years and has led the antitrust unit. For the last 19 years, Kathleen has played a leading role representing the people of California in many of the seminal antitrust cases of our time, including the Microsoft case and the Hartford fire insurance case, among numerous others. Kathleen is also a former chair of the multi state antitrust task force of the National Association of attorneys general. And she's a 2013 recipient of AI Alfred econ award for antitrust achievement. She's also a past recipient of both the antitrust attorney of the Year award given by the California State Bar Association, and the lawyer of the Year award given by California lawyer magazine. Kathleen, thank you for being here. pleasure to be with you. Thank you. Well, I thought it would be interesting to start off for our listeners to hear a little bit about what each of your offices have been up to. Kathleen, I'll start with you. Can you briefly summarize some of your pending in trust investigations or enforcement actions, at least those that are public?

FOOTE: Okay, well, pending investigations, of course, are not public. Let me begin very briefly, with the disclaimer, unlike Attorney General, wiser, I am not I'm not an attorney general. So these are my own opinions. I'm not speaking for the California Attorney General. We are coming off of two major cases, conduct case against a major healthcare system for anti competitive use of power in the provider insurer contracting process. This was the Sutter Health case. It settled last October, almost literally on the courthouse steps in the sense that there was a jury already impaneled. When settlement occurred. We're still working through the approvals of that settlement. The other major one, of course, was the T Mobile sprint merger case that went to trial with a multi state group. California was a co lead and we were heavily invested in that. Of course, there was as you all know, and unfavorable ruling by the trial court after which settlement of the appeal was entered into. I'll also just mention another major case that we filed just this month against two oil and gas trading companies. This one alleges a conspiracy to manipulate prices in the spot market for finished gasoline during the 2015 2016 time period. Phil, what about Colorado? What's new?

WEISER: Well, we have had an active program. What I want to start with is a precedent setting action about a year ago, we took action alone, without another state without the federal government to address any competitive consolidation in healthcare. This was a so called vertical merger involving united healthcare and the vetos Medical Group. The FTC was going to let this go, we had some real concerns, and we obtained some relief for the people of Colorado. We've also been involved in multi state actions. Along with California and other states. There's obviously announced investigations of Google and Facebook, there's been recent discussions of activity in the Meatpacking industry. There's also a multi state generic drug investigation going on that was about a year ago as well, when that was updated. And then, as Kathleen said, there's a lot of investigations that have not necessarily been publicly discussed that we're not at liberty to talk about.

STUTZ: Phil, you mentioned generic drugs, big tech investigations, multi state efforts. I know all of the state attorneys general offices are in frequent communication. Are there any enforcement actions by some of your colleagues from your sister offices that you wanted to draw attention to or that you think are particularly important right now?

WEISER: Yeah, I want to give a shout out to Bob Ferguson, who is here behind me in law school, he has been a real leader in no poach investigations, particularly those where you had a franchise, where the franchise said, all of the relevant franchisees have to agree not to hire workers from each other. And that had no relationship at all to legitimate let's say trade secrets or other issues, was totally about suppressing competition in the labor market to hurt who were often relatively modestly paid workers who needed all the wages they could get, and yet wages were being suppressed by this practice. When I was at the DOJ, we brought the first such action involving a number of Tella tech companies in Silicon Valley who had a no poach set of agreements. I was glad to see Bob Ferguson follow up on this effort. And it's again important to protect workers as well as consumers with antitrust.

STUTZ: That's a great point. And I want to come back to labor market restraints generally, at a later point in this conversation, but Kathleen, let me pose the same question to you. And any shoutouts to some any other states that you want to give?

FOOTE: Well, I couldn't agree more with what Bob just said about the no poach cases. The generic drugs, price fixing cases are certainly very major one series of litigations. And in terms of independent matters, of course, a lot of a lot of states take on independent issues all the time. Most of them never reached the light of day, some of the most important ones are in the health care area. And another shout out to the Washington Attorney General for their recent settlement of the CA dry Franciscan case. It involves merger and it involves conduct and it was, I think, a very important one in terms of the setting some new parameters in that area.

STUTZ: You know, ai recently produced a report on the state of us antitrust enforcement in competition policy and examine some indicators of declining enforcement at the federal level and really emphasize the important role that states play in sort of picking up the slack when when that occurs. And I'm wondering just subjectively, from your both of your perspectives, or objectively, if you have an answer. Did the states seem more busy on the antitrust front than they have historically? That's that's my impression. I'm just curious if that's your impression as well. Phil, I'll ask you first.

WEISER: The challenge is as compared to what and I was not, let's say focused on state interest enforcement, the 1980s. That's a time period where there was also a lot of talk that it was a heyday of state antitrust enforcement. What I will say is true is I believe federalism and State Leadership more generally, is certainly at the fore and that's on a range of fronts, from public health enforcement, to environmental issues to anti trust issues. So maybe if you take State Leadership overall we are in a high point, any trust in particular Obviously, you have different areas where the feds are less active, and that creates more room and indeed, imperative for the state step up. I'm not sure I can compare us today. These are the other heirs.

STUTZ: Kathleen, what do you think?

FOOTE: Well, that feels was a very good answer. I will say that we are in in my unit, we are larger than we have been in the past this is with about 20 to 23 lawyers, we are the largest we have ever been. In terms of antitrust enforcement, we've had a series of this obviously depends to some degree on our legislature and on our attorney general. But they have had sufficient interest all around for the last number of years, to give us better, better support than we had a number of years ago in that area.

STUTZ: I wanted to also ask both of you not only about antitrust enforcement, but also state level legislative initiatives, maybe not directly in the antitrust domain, but that have important implications for antitrust enforcement or competition policy. Kathleen, I'm thinking of California is AB 824, which is a pay for delay law. I'd be curious to hear that the status of AB a 24, but also just any other important legislative initiatives that you think we ought to be paying attention to in California?

FOOTE: ABA 24 is an interesting one, essentially, it was enacted last year, it mandates a structured rule of reason approach in cases involving reverse payment or pay for delay agreements in pharma. In doing so, basically, what it does is track a 2015, California Supreme Court ruling in the inrae, Cipro one and two cases. And, and it is, as far as I know, creates the first sort of structured rule of reason, process. Structured rule of reason is something that is batted around a lot of academic journals and, and even AI publications for quite some time. And this is the first run out of that I'm familiar with. There was naturally an immediate legal challenge, seeking to enjoin its enforcement overall, it was a broad challenge as being unconstitutional, unlawful on its face. And the ruling was that no, no, no, you can't do that. Maybe someday, you can consider it as applied. But that particular that particular decision denying denying a preliminary injunction is now in front of the Ninth Circuit. And I believe there is going to be argument on that in just a few more weeks.

STUTZ: Okay, we'll keep an eye out. Fill any? Excuse me, Kathleen is Was there anything else from California that you wanted to raise?

FOOTE: There is another legislative item in the health care area that is in some early stages of working its way through the legislature, it's a bill called SB 977. It largely relates to expanding what we now have, which is Attorney General regulatory control over nonprofit hospital mergers, it expands it to a larger universe of mergers in the health care area that will pick up clinics, physician groups, and so on. And we'll see where that goes. it's early and the state legislature has a lot of other stuff on its plate right now as we can all imagine.

STUTZ: Yes, Phil, what about Colorado anything any legislative developments that are antitrust and competition policy experts ought to be following.

WEISER: He had a bill passed last year, mandating our office to do a study about insulin pricing. For people who follow this market, you might know that within a four year period from around 2012 to 2016, prices doubled. For us antitrusters out there. We know that's not ordinary, usually competitive markets, you wouldn't see price increases of that amount. And so we've been tasked to evaluate what's going on there. And what recommendations can we offer with any trust or competition policy more generally, to address the increased prices of insulin which for many people, it's life. for Deaf dragon, so having to pay more for insulin is not just problematic, potentially from the health point of view. But it can also be a huge challenge from the quality of life perspective.

STUTZ: Yeah, health care and drugs are an incredibly important topic for a variety of reasons right now, and we're going to talk more about that later during this podcast. For now, I wanted to shift gears a little bit and talk about Have you both talked about an issue that's really as old as antitrust law itself. But that's still managed to manages to generate quite a bit of discussion and debate. And that is the relationship between state enforcers and federal enforcers. And, Kathleen, I thought I would start with you. This came up prominently in the sprint T Mobile merger, which you already mentioned. Of course, a group of states led by California and New York, sued to block the deal, notwithstanding that the DOJ and FCC had approved them. Well, they they agreed the merger was illegal as proposed, but accepted a remedy, which was a hybrid behavioral structural remedy. And California and others, decided to pursue independent relief decided to try to block the deal outright. So hoping you could talk a little bit about what led your office to that decision, and what were some of the considerations practical and otherwise, that drove your decision making?

FOOTE: Well, I guess I should begin by saying I can't talk very much about the decision to file the suit in that case, because that involves internal deliberations that remain confidential. But But I will say that, that the merger, despite its size does meet our usual criteria for taking action in a merger case. Those include harm to California consumers impacts in local markets, and area of recognized state interest, and in this case, state agency concern our California Public Utilities Commission. And and the ability to bring something valuable to the case by virtue of our participation, including, obviously our focus on local markets. That said, it is it's not that it never happens, but only very rarely do we diverged from our federal colleagues on what the outcome of the investigation should be. We did obviously, in this case, the reaction from the antitrust division is was startling, to say the least. First their effort to disqualify our outside counsel. And then and then the motion, essentially asking the court to defer to the divisions, divestiture remedy, past efforts to diminish state enforcement have certainly been made in by the private bar. Very much so in the Microsoft case, for example, but never has that been done by a fellow enforcement agency with whom we've worked closely and cooperatively for decades. The Division did not do so and Microsoft, although the parties did, and, and I wouldn't be surprised if they attempted to get the division to join them in that, but they did not. And of course, the Microsoft judge Koehler catelli, the remedies judge rejected that idea. And it is It has been an idea that has been rejected by every court pretty much, including several times by the Supreme Court down through the years.

STUTZ: And you you helped by raising Microsoft and putting, you know, in many ways, Sprint T Mobile is a small part of a ongoing conversation in a broader conversation, which the assistant attorney general making delrahim continued a bit in a speech he gave in February where he sort of set out his views on this issue of the proper balance between state and federal enforcement in pretty broad constitutional terms. And to summarize briefly, he argues that states really should not independently exercise enforcement authority when it would be incompatible with federal enforcement. He cites concerns about creating a disorderly and inefficient merger review process, and potentially interfering with the federal government's settlements with with private parties. Phil, you recently gave a keynote speech at the Loyola antitrust colloquium that put this general issue into broader Lee goal in historical context, and I was wondering if you could just take a few minutes to talk about the framework you introduced in that speech and what it means

WEIST: Be happy to Randy. And I want to just underscore that the federal government is a very important partner of the states. And there is this great tradition of collaboration that I will continue to work to support every way I can. What is disappointing is that partnership needs to start on a promise of cooperative federalism. And that's something I've thought a lot about, not just in the trust area. But in telecommunications and environmental law. The whole principle of cooperative federalism, which was adopted by Congress in the Hart, Scott Rodino Act in 1976, is that states have the ability to tailor solutions and address concerns in their states, like we did last year in this case I mentioned earlier, that's a critical authority and as you noted, in the Microsoft case, the feds don't get to say to states, ‘you don't have any authority to proceed, if we don't want you to proceed’. Only courts can decide what the law is, not the federal government. The federal government can have a view. But the court has to make the ultimate ruling and the idea that a federal government position in a merger, for example, is preclusive, just isn't right. And, in fact, it's interesting because the speech you made and the argument the DOJ made is actually premised on *dissent* in this *Georgia v. Pennsylvania Railroad* case. The majority holding there was that states *are* authorized to seek injunctive relief. And that is a principle that, again, is codified in the law (Hart Scott Rodino law). It's been the history of practice. And I think the principle, if it's taken to the logical extreme, one of the concerns I'd have is, what about federal regulators who bless a merger, would you then immunize that merger from any trust oversight by *anybody*, a federal or a state authority, we've got to be careful about this principle, particularly because we're living in a time where I don't think it's fair to say that we need more room for concentration, the economy is more concentrated today than it's ever been. And so having state AGs authorized to pick up the slack, develop appropriate solutions, like we did last year, is not only the right thing to do, as a matter of law, it's the right thing to do as a matter of policy.

STUTZ: Kathleen, I want to give you a chance to react to that. And also to, you know, both of you have raised the distinction between sort of local competitive concerns and national competitive concerns, and sometimes, you know, in order to get effective local relief, a remedies going have to have national implications, you know, I'm thinking of Sprint / T Mobile, it would have been hard to tailor a remedy to California, for example. Kathleen, what are you what are your thoughts on Phil’s cooperative federalism framework and these issues?

FOOTE: Well, I couldn't agree more. And I think Phil really said it all. And, you know, in any area of importance, I think, in public life, the designers build redundancy into the system, whether it's emergency responses we're seeing with COVID-19, which is not has been thinned out quite a bit, there was a redundancy that should have been in place, or with law enforcement. And certainly that's, that's clearly always been always been the policy. The legislature's recognized by the courts, for antitrust. Its also the case outside the US in many respects. You know, a number of years ago, following the Microsoft case, this whole issue was teed up before the Antitrust Modernization Commission, and although there were members of that commission going in who had the notion that the state should be state should be pushed into more subsidiary supporting role. Overall, they came out the other way in the end, after they really considered it and studied the history of state enforcement, which the states themselves through NAAG did a lot to document during that period. And there were there were many, many misconceptions about what the states had been doing in antitrust enforcement over the years, and that documentation proved to be quite an important ingredient in the conclusions that the AMC reached.

#### The effect is identical to federal law

Margaret H. Lemos 18, Robert G. Seaks Distinguished Professor of Law at Duke University, JD from New York University, AB from Brown University, Alston & Bird Professor of Law at Duke University, JD from Harvard University Law School, BA in Government and English from Dartmouth College, “State Public-Law Litigation in an Age of Polarization”, Texas Law Review, Volume 97, Issue 1, https://texaslawreview.org/state-public-law-litigation-in-an-age-of-polarization/

As institutional capacity expanded, so too did the opportunities to use it. When federal agencies decreased their enforcement activities in the 1980s, state-level enforcers rushed in to fill the void.109109See William L. Webster, The Emerging Role of State Attorneys General and the New Federalism, 30 Washburn L.J. 1, 5 (1990) (“In short order the states asserted themselves in dramatic fashion. . . . Attorneys general were called ‘fifty regulatory Rambos’ by one individual.”). CLOSE Areas like antitrust and consumer protection, once dominated by the federal government, became enclaves of aggressive state enforcement.110110Id.; see also Clayton, supra note 103, at 535–36 (describing states’ efforts to secure regulatory and enforcement authority in areas including antitrust and consumer protection). CLOSE Many AGs established specialized units and task forces to handle their new responsibilities, thereby “enhanc[ing] the role of the attorney general as a ‘public interest lawyer’ and offer[ing] many opportunities to improve the quality of life for citizens of the states and jurisdictions.”111111NAAG, supra note 95, at 46. CLOSE

Meanwhile, new provisions of federal law facilitated state litigation by authorizing state AGs to enforce federal statutes, often by suing as parens patriae to protect the rights of state citizens.112112See, e.g., Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, sec. 301, § 4(c), 90 Stat. 1383, 1394 (1976) (codified at 15 U.S.C. § 15(c) (2012)) (authorizing states to sue as parens patriae in federal court on behalf of their citizens to secure treble damages for a variety of federal antitrust violations); see also Margaret H. Lemos, State Enforcement of Federal Law, 86 N.Y.U. L. Rev. 698, 712 (2011) (“As state attorneys general assumed new prominence, provisions for state enforcement began to proliferate in Congress. New provisions have been enacted by virtually every Congress in the last two decades.”). CLOSE The common law doctrine of parens patriae dates back to early English practice, in which the King exercised certain royal prerogatives as “parent of the country.”113113Richard P. Ieyoub & Theodore Eisenberg, State Attorney General Actions, the Tobacco Litigation, and the Doctrine of Parens Patriae, 74 Tul. L. Rev. 1859, 1863 (2000); Jack Ratliff, Parens Patriae: An Overview, 74 Tul. L. Rev. 1847, 1850 (2000). CLOSE In its more modern form, the doctrine allows states to vindicate sovereign or quasi-sovereign interests, including an “interest in the health and well-being . . . of [their] residents in general.”114114Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 607 (1982). CLOSE Today, many state and federal statutes explicitly authorize states to sue as parens patriae.115115Margaret H. Lemos, Aggregate Litigation Goes Public: Representative Suits by State Attorneys General, 126 Harv. L. Rev. 486, 495–96, 496–97 nn.39–40 (2012). Whether Congress could confer authority on state AGs to sue in circumstances where state law denies it is an interesting question, but beyond the scope of this article. CLOSE Others can be read to authorize state suits implicitly by creating broad rights of action for citizens whom the states represent.116116See, e.g., EEOC v. Fed. Express Corp., 268 F. Supp. 2d 192, 197 (E.D.N.Y. 2003) (citing Connecticut v. Physicians Health Servs. of Conn., Inc., 287 F.3d 110, 121 (2d Cir. 2002)) (“[S]tanding provisions in many . . . statutes implicitly authorize[] parens patriae standing by using language that permits any ‘person’ who is ‘aggrieved’ or ‘injured’ to bring suit.”); see also Massachusetts v. Bull HN Info. Sys., Inc., 16 F. Supp. 2d 90, 103 (D. Mass. 1998) (quoting 29 U.S.C. § 630(a)) (reasoning that AG has statutory standing to sue under Age Discrimination in Employment Act as “‘legal representative’ of the people of the [state] for the purposes of this action”); Minn. v. Standard Oil Co. (Ind.), 568 F. Supp. 556, 563–66 (D. Minn. 1983) (permitting state to sue as parens patriae under § 210 of Economic Stabilization Act of 1970, which permitted suit by any “person” because “when a state acts in its quasi-sovereign capacity in a parens patriae action, . . . [a] harm to the individual citizens becomes an injury to the state, and the state in turn becomes the plaintiff”). CLOSE And even absent specific statutory authorization, state AGs may (depending on state law) have common law or constitutional authority to litigate as parens patriae on behalf of citizens.117117See generally Ieyoub & Eisenberg, supra note 111, at 1864–75 (describing the contours of parens patriae doctrine and its grounding in common law). CLOSE

The 1990s tobacco litigation built on, and spurred, expansions in AG authority. Prior to the states’ assault on Big Tobacco, countless private plaintiffs had sued under a variety of tort and warranty theories—all seeking to hold the industry accountable for peddling an unreasonably dangerous product. None succeeded.118118Id. at 1860 (“Before the states’ litigation, the tobacco industry had not lost a smoking case . . . .”). CLOSE Many plaintiffs were simply outspent by the defendants; others were turned away on the ground that they had assumed the risk of smoking; and still others were thwarted by courts’ refusal to permit large numbers of smokers to sue together as class actions.119119Anthony J. Sebok, Pretext, Transparency and Motive in Mass Restitution Litigation, 57 Vand. L. Rev. 2177, 2184–88 (2004) (describing the history of tobacco litigation). CLOSE

Then came the states, which were able to avoid the pitfalls of earlier litigation and bring the tobacco companies to the bargaining table. Most states pursued restitution actions, seeking reimbursement for Medicaid expenses incurred in the treatment of smoking-related illnesses.120120Id. at 2189; see also id. (describing Minnesota’s consumer-fraud approach as a notable exception). CLOSE By shifting the focus from individual smokers to the states’ own losses, the state suits were able to cut off the tobacco companies’ prime defense strategy: blaming individual smokers. As Mississippi AG Mike Moore put it, “This time, the industry cannot claim that a smoker knew full well what risks he took each time he lit up. The state of Mississippi never smoked a cigarette. Yet it has paid the medical expenses of thousands of indigent smokers who did.”121121Mike Moore, The States Are Just Trying to Take Care of Sick Citizens and Protect Children, 83 A.B.A. J. 53, 53 (1997). CLOSE Similarly, the states’ strategy allowed them to avoid the challenges of class certification: “[I]nstead of millions of plaintiffs, there would only be one. Concerns over common issues of fact, which doomed earlier class actions to fail the predominance and superiority tests of federal and state class action statutes, would be finessed.”122122Sebok, supra note 117, at 2190. CLOSE Ultimately, forty-six states joined the Master Settlement Agreement, which required the tobacco companies to pay the states more than $200 billion over twenty-five years and to agree to an array of regulatory constraints.123123Hanoch Dagan & James J. White, Governments, Citizens, and Injurious Industries, 75 N.Y.U. L. Rev. 354, 371–73 (2000). Four states settled separately for approximately $36.8 billion, bringing the total to roughly $243 billion. W. Kip Vicusi, The Governmental Composition of the Insurance Costs of Smoking, 42 J.L. & Econ. 575, 577 (1999). CLOSE

Although the tobacco litigation is in some ways sui generis, it highlights several features that have helped fuel state litigation more broadly. First, the tobacco suits entailed an “unprecedented” degree of interstate cooperation among AGs, and their success made clear—to AGs as well as to potential defendants—the power of concerted multistate action.124124Ieyoub & Eisenberg, supra note 111, at 1860 (“The scope of interstate attorney general cooperation was unprecedented.”). CLOSE Second, the litigation demonstrated the value of cooperation between AGs and private attorneys. The states’ suits benefited from substantial assistance and financing from private lawyers—a pattern that has been repeated in many subsequent actions. By teaming up with private counsel (particularly those willing to work for a contingent fee), state AGs can expand their reach into litigation that would otherwise be prohibitively expensive or resource-intensive, or would require specialized expertise.125125See generally Margaret H. Lemos, Privatizing Public Litigation, 104 Geo. L.J. 515, 532–33, 538–46 (2016) (analyzing the costs and benefits of partnerships between public and private attorneys). CLOSE Third, the staggering size of the settlement—“the largest transfer of wealth as a result of litigation in the history of the human race”126126Michael DeBow, The State Tobacco Litigation and the Separation of Powers in State Governments: Repairing the Damage, 31 Seton Hall L. Rev. 563, 564 (2001). Critics are quick to note that the settlement is being financed largely by smokers, who now pay more for cigarettes. Id.; see also Sebok, supra note 117, at 2181 (“As an executive at R.J. Reynolds ironically put it, ‘[T]here’s no doubt that the largest financial stakeholder in the [tobacco] industry is the state governments.’”). CLOSE—revealed just how lucrative state litigation could be. In the years since the tobacco litigation, state AGs have become adept at using large monetary recoveries to publicize the financial contributions they make to the state and its citizens.127127See Margaret H. Lemos & Max Minzner, For-Profit Public Enforcement, 127 Harv. L. Rev. 853, 855 & n.6 (2014) (offering examples); Lemos, supra note 110, at 732–33 & n.153 (same). CLOSE In many states, moreover, AG offices can retain certain types of financial recoveries, making litigation a self-sustaining endeavor.128128Lemos & Minzner, supra note 125, at 866–67 (describing “revolving fund[]” arrangements at the state level). CLOSE

Finally, the states’ legal theories in the tobacco cases created a template for future actions against industries that cause widespread harm to state citizens.129129See Ieyoub & Eisenberg, supra note 111, at 1862 (arguing that “it is [the states’] legal theories, together with the precedent of concerted attorney general action, that have the greatest implications for joint action on other fronts”). CLOSE The recoupment strategy alone is a powerful tool for recovering the states’ own expenses130130See Dagan & White, supra note 121, at 355–57 (focusing on the states’ restitutionary claims and describing similar claims against gun manufacturers and lead-paint makers). CLOSE and becomes more powerful still when combined with the states’ authority to sue as parens patriae to address harms to their citizens.131131See generally Ieyoub & Eisenberg, supra note 111, at 1862, 1875–83 (describing parens patriae standing as applied in the tobacco litigation and its potential for future suits). For a more critical take, see DeBow, supra note 124, at 565 (arguing that “the tobacco template could conceivably be applied to a wide range of industries in future government litigation—including, perhaps, makers of alcoholic beverages, fatty foods, and automobiles” and warning of a “substantial danger that state attorneys general and local government officials will regularly succumb to the temptation of the tobacco example, and will seek to achieve regulatory and tax outcomes through litigation . . . .”). CLOSE In the ongoing state efforts against opioid manufacturers, for example, the states have asserted various common law tort claims and are seeking recovery for harms to citizens and to their own proprietary interests, including “billions of dollars in damages to the State related to the excessive costs of healthcare, criminal justice, education, social services, lost productivity; and other economic losses as a direct result of the illicit use of these dangerous drugs caused by opioid diversion.”132132Complaint at 3, Ohio v. McKesson Corp., No. 1:12-cv-00185-RBW (Ohio Ct. Com. Pl. Feb. 26, 2018). CLOSE

Courts—state and federal—have also played a role in the growth of state AG litigation. Perhaps most importantly, they have taken an expansive view of state standing. In Massachusetts v. EPA, the Supreme Court cited Massachusetts’s “stake in protecting its quasi-sovereign interests” as a reason for “special solicitude” in the standing analysis.133133549 U.S. 497, 520 (2007). CLOSE Long before those words were penned, lower federal courts had held that states can sue as parens patriae to vindicate their citizens’ rights under the federal constitution, even in circumstances in which the citizens themselves would lack standing. For instance, whereas the rule of City of Los Angeles v. Lyons makes it difficult for private parties to seek injunctive relief from sporadic instances of official misconduct,13413446 U.S. 95, 105–07, 110 (1983) (holding that person subjected to illegal chokehold by police lacked standing to seek an injunction, as there was no guarantee that the plaintiff would be subjected to similar acts by police in the future); see also O’Shea v. Littleton, 414 U.S. 488, 490, 503–04 (1974) (denying that a case or controversy existed regarding discriminatory law enforcement practices on similar grounds). CLOSE courts have permitted states to sue in equivalent cases.135135See, e.g., Pennsylvania v. Porter, 659 F.2d 306, 314–15 (3d Cir. 1981) (holding that state had standing as parens patriae to enjoin police misconduct while noting that “many individual victims may be unable to show the likelihood of future violations of their rights”). Courts have reasoned that, because the state represents all of its citizens, it will typically have little trouble establishing that a harm that has occurred in the past will likely befall some citizens in the future. Id. This sort of probabilistic reasoning generally does not work for private litigants. See generally Summers v. Earth Island Inst., 555 U.S. 488, 491, 494–501 (2009) (denying standing to a private environmental organization that had asserted a statistical certainty that some of its members would be injured by some of the challenged Forest Service actions). We suspect the difference is that cases like O’Shea and Lyons are grounded importantly in concerns about judicial intervention in state and local governance—a concern that is radically less compelling when the state itself is the plaintiff. CLOSE Similarly, as noted above, courts recognized states’ standing to sue the tobacco companies to recoup the expenses they had incurred as a result of smoking-related illnesses suffered by their citizens. When unions and other private organizations asserted similar claims, however, courts ruled that their injuries were too remote to establish standing.136136John C. Coffee, Jr., “When Smoke Gets in Your Eyes”: Myth and Reality About the Synthesis of Private Counsel and Public Client, 51 DePaul L. Rev. 241, 241–42 (2001). CLOSE

Representative suits by states also enjoy a host of other procedural advantages over their closest private analogues, class actions. Whereas class actions are governed by a complex set of procedural requirements designed to promote judicial economy and protect the interests of absent class members, courts have declined to apply those rules to similar suits by states—even as they have tightened up the requirements for private suits.137137See Lemos, State Enforcement, supra note 110, at 500–10 (detailing the procedural requirements for private class actions versus the requirements for similar suits brought by the State). CLOSE Courts have likewise refused to subject parens patriae suits to the jurisdictional requirements of the Class Action Fairness Act138138Mississippi v. AU Optronics Corp., 571 U.S. 161, 164 (2014); cf. People v. Greenberg, 946 N.Y.S.2d 1, 7 (App. Div. 2012) (holding that suit by state AG was exempt from similar jurisdictional rules governing private securities actions). CLOSE or to mandatory arbitration clauses.139139See, e.g., EEOC v. Waffle House, Inc., 534 U.S. 279, 294 (2002) (holding that arbitration agreement between employee and employer did not bar EEOC from bringing enforcement action). CLOSE And when faced with simultaneous suits by states and by private class counsel, courts have often denied certification to the private class action on the ground that the state suit is the “superior” method of adjudication.140140See Lemos, State Enforcement, supra note 110, at 505–06 (collecting cases). CLOSE As one court put it, “[T]he State should be the preferred representative” of its citizens.141141Sage v. Appalachian Oil Co., Inc., No. 3:92-CV-176, 2:93-CV-229, 1994 WL 637443, at \*2 (E.D. Tenn. Sept. 7, 1994). CLOSE

It is not surprising, then, that state litigation activity has increased markedly in both volume and visibility in recent decades. For example, the number of Supreme Court cases in which states are parties has shot up since the 1980s—spurred in part by the creation in 1982 of the National Association of Attorneys General (NAAG) Supreme Court Project.142142See Douglas Ross, Safeguarding Our Federalism: Lessons for the States from the Supreme Court, 45 Pub. Admin. Rev. 723, 727–28 (1985) (describing NAAG’s genesis and functions). Another significant institutional response was the creation of the State and Local Legal Center (SLLC), which files amicus briefs on behalf of member associations. Id. at 728. CLOSE Even more notable is the increase in states’ filings as amici. Such filings are not command performances but represent AGs’ discretionary decisions to devote limited resources to Supreme Court advocacy.143143See Clayton, supra note 103, at 544 (“[T]he decision to participate as amicus curiae is determined largely by the personal interests and felt political pressures on individual attorneys general.”). CLOSE The most comprehensive study of state litigation in the Supreme Court reports that since 1989 states have “become exceptionally active amicus curiae participants. They account for 20% of all certiorari petitions accompanied by an amicus brief and 18% of the amicus briefs on the merits.”144144Waltenburg & Swinford, supra note 104, at 48. If anything, the number of state briefs filed understates the level of state activity. Thanks in large part to NAAG’s coordination efforts, states frequently band together on amicus briefs. A study of merits-stage state amicus briefs found that the average number of joining states jumped from 2.4 in the 1970s to 13.9 in the 1990s. Clayton & McGuire, supra note 105, at 24–25; see also Waltenburg & Swinford, supra note 104, at 48 (“NAAG’s focus on the coordination of state amicus activity has resulted in substantial levels of joining behavior. Accordingly, where it is rare to find more than two amici joining together on a pre-certiorari amicus brief, on average six states coalesce . . . .”). A more recent study of state amicus filings reveals similar joining behavior at the certiorari stage: using data on state certiorari filings compiled by Dan Schweitzer at NAAG, Greg Goelzhauser and Nicole Vouvalis report that “[d]uring the 2001–2009 terms, state-sponsored amicus briefs urging review in state-filed cases were joined by an average of about 18 states, and only 5 of the 88 briefs filed were signed by a single state.” Greg Goelzhauser & Nicole Vouvalis, State Coordinating Institutions and Agenda Setting on the U.S. Supreme Court, 41 Am. Pol. Res. 819, 825 (2013). One veteran state litigator attributes these changes in part to technological advances, noting that email has made it far easier for dispersed AGs’ offices to share drafts. See Letter from Tom Barnico, Dir. AG Program, Boston College Law School, to authors (July 20, 2018) (on file with authors). CLOSE Today, states’ participation in the Supreme Court—both as direct parties and as amici—is second only to that of the federal government.145145Margaret H. Lemos & Kevin M. Quinn, Litigating State Interests: Attorneys General as Amici, 90 N.Y.U. L. Rev. 1229, 1235 (2015). CLOSE

The Supreme Court may be the most prominent venue for state litigation, but it is hardly the only one. States also have become more frequent litigants in the state and lower federal courts. Texas’s Greg Abbott sued the Obama Administration “at least 44 times”;146146Dan Frosch & Jacob Gershman, Abbott’s Strategy in Texas: 44 Lawsuits, One Opponent: Obama Administration, Wall St. J. (June 24, 2016), https://www.wsj.com/articles/abbotts-strategy-in-texas-44-lawsuits-one-opponent-obama-administration-1466778976 [https://perma.cc/D87N-QWXA]. CLOSE AG Maura Healy of Massachusetts reportedly “led or joined dozens of lawsuits and legal briefs” challenging the Trump Administration in 2017 alone.147147Steve LeBlanc & Bob Salsberg, Massachusetts’ Maura Healey Helping Lead Effort to Litigate Trump, Boston.com (Dec. 18, 2017), https://www.boston.com/news/politics/2017/12/18/massachusetts-maura-healey-helping-lead-effort-to-litigate-trump [https://perma.cc/9M9B-GA4X] CLOSE

And states are now far more likely to band together in litigation in order to maximize their impact. For example, Paul Nolette found a marked increase in “coordinated AG litigation”—defined as filed lawsuits as well as preliminary investigations involving coordinated activity by at least two AGs—from 1980 to 2013. Professor Nolette reports: “From a consistently low number of one to four cases a year throughout the 1980s, the quantity of multistate cases . . . gradually increased, reaching twenty for the first time in 1996, thirty in 2002, and forty in 2008.”148148Nolette, supra note 13, at 21 app. at 221; see also id. fig.2.1. CLOSE The number of AGs participating in such cases also has grown, with a greater proportion of multistate cases involving sixteen or more states in recent years.149149Id. at 21–22 & fig.2.2. CLOSE As Nolette explains, “Litigation involving over half of the nation’s AGs, once an unusual event, represents over 40% of all the multistate cases conducted since 2000.”150150Id. at 22. CLOSE For many observers, AG activism amounts to “a major shift in how political fights are waged.”151151Frosch & Gershman, supra note 144. CLOSE

B. MAPPING STATE LITIGATION

We know states are doing more litigation, but the aggregate numbers can only tell us so much. Although discussion of high-profile state litigation sometimes treats it as a unitary category, that perspective obscures important variation within the genre. This section maps state litigation into several discrete types, based on the nature of the claims asserted. We begin with the kinds of cases observers typically associate with state public-law litigation—cases in which states are pitted against the federal government. These include (1) claims that federal government action exceeds the limits of national regulatory authority, as in the state challenges to the ACA; (2) claims that federal government action violates aspects of the national separation of powers, as in state challenges to President Obama’s immigration policies; and (3) claims that federal government action violates individual federal rights, as in the state lawsuits against President Trump’s travel bans. It bears emphasis, however, that states can also shape policy outside their borders by targeting primary behavior directly, in suits against private actors alleging violations of either (4) state or (5) federal law.

To be sure, many prominent lawsuits will fall within more than one of these categories. For example, challenges to President Trump’s travel bans have sometimes included both claims that the bans violate individual rights and claims that the President has exceeded the scope of his lawful executive authority.152152See Complaint at 11–12, Washington v. Trump, No. 2:17-cv-00141-JLR, 2017 WL 462040 (W.D. Wash. Jan. 3, 2017) (alleging individual rights violations as well as violations of the Administrative Procedure Act (APA)). CLOSE And state amicus briefs concerning the validity of the federal Defense of Marriage Act (DOMA) raised both federalism and individual rights arguments.153153See Brief Addressing the Merits of the State of Indiana and 16 Other States as Amicus Curiae in Support of the Bipartisan Legal Advocacy Group of the U.S. House of Representatives at 4–8, United States v. Windsor, 570 U.S. 744 (2013) (No. 12-307), 2013 WL 390993 [hereinafter Windsor Pro-DOMA States’ Brief] (arguing that neither federalism nor equal protection analysis supported heightened scrutiny of DOMA); Brief on the Merits of the States of New York, Massachusetts, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, and Washington, and the District of Columbia as Amici Curiae in Support of Respondent at 3, United States v. Windsor, 570 U.S. 744 (2013) (No. 12-307), 2013 WL 840031 [hereinafter Windsor Anti-DOMA States’ Brief] (arguing that DOMA denied equal protection and infringed states’ authority to regulate marriage). There is, moreover, important diversity within categories. As we discuss further below, the relevant legal constraints in each of the first three categories—federalism and separation-of-powers principles and individual rights—may be either constitutional or statutory in character. We do not distinguish between constitutional and statutory claims because we think that both constitutional and statutory norms serve constitutive functions in many instances. See generally Ernest A. Young, The Constitution Outside the Constitution, 117 Yale L.J. 408, 464 (2007) (discussing the constitutive role of statutory and other non-entrenched norms in structuring the government and identifying individual rights). CLOSE

Each category also includes legal claims and arguments asserted by states in a variety of settings—including, for example, not only lawsuits but also amicus filings by state AGs. We define our categories by the legal claim asserted, not the form in which that claim is advanced. And, while we have framed our categories as challenges to the legality of either federal governmental or private action, we also include states’ assertion of arguments—often in opposition to other states—affirming the legality of those actions.154154See, e.g., Windsor Pro-DOMA States’ Brief, supra note 151, at 2–3. CLOSE

1. Federal Power Claims.—This category contains claims that federal action exceeds the legal limits of national authority. The paradigmatic claims are those about the reach of Congress’s enumerated powers.155155These claims almost always concern the Commerce Clause—the catch-all, default power that sustains most federal legislation. But occasionally they involve other powers, such as Congress’s power to enforce the Reconstruction Amendments. City of Boerne v. Flores, 521 U.S. 507, 512 (1997). Boerne was a private claim brought against a local government by church officials under the federal Religious Freedom Restoration Act (RFRA). But the case drew state amici filings on both sides. See Brief of the States of Maryland, Connecticut, Massachusetts, and New York as Amici Curiae in Support of Respondent, City of Boerne v. Flores, 521 U.S. 507 (1997) (No. 95-2074), 1996 WL 10282 (defending RFRA); Brief for Amici States of Ohio, Arizona, Colorado, Delaware, Florida, Hawaii, Idaho, Mississippi, Nevada, New Hampshire, North Carolina, Oklahoma, the Commonwealth of Pennsylvania, and the Territories of American Samoa, Guam, and the Virgin Islands in Support of Petitioner, City of Boerne, Texas, City of Boerne v. Flores, 521 U.S. 507 (1997) (No. 95-2074), 1996 WL 695519 (attacking RFRA). And Ohio Solicitor Jeffrey Sutton was given oral argument time to argue against RFRA’s constitutionality. CLOSE For example, minutes after President Obama signed the ACA, thirteen states filed suit arguing that Congress lacked power under the Commerce Clause to require individuals to buy health insurance.15615614 States Sue to Block Health Care Law, CNN (Mar. 23, 2010), http://www.cnn.com/2010/CRIME/03/23/health.care.lawsuit/index.html [https://perma.cc/3UPJ-8C8H]; see generally NFIB v. Sebelius, 567 U.S. 519, 547–58 (2012) (opinion of Roberts, C.J.) (accepting those arguments). CLOSE Sometimes states raise these sorts of claims as a preemptive strike on federal legislation, as in the ACA case. Perhaps more often, these issues are raised by private parties as defenses to the imposition of federal requirements or penalties,157157In United States v. Lopez, 514 U.S. 549 (1995), for example, a criminal defendant prosecuted for possessing a firearm within 1,000 feet of a school argued (successfully) that the federal prohibition did not regulate interstate commerce. Id. at 551–52. In United States v. Morrison, 529 U.S. 598 (2000), an individual defendant in a civil case argued (again successfully) that the federal private right of action for victims of “gender-motivated violence” exceeded Congress’s power under both the Commerce Clause and Section Five of the Fourteenth Amendment. Id. at 601–02, 604. CLOSE or in suits for a declaratory judgment or an injunction seeking to bar enforcement of federal law.158158See, e.g., Gonzales v. Raich, 545 U.S. 1, 15 (2005) (addressing claim by users of medicinal marijuana seeking declaratory and injunctive relief that the federal Controlled Substances Act, as applied to them, exceeded Congress’s Commerce power). CLOSE States then come in as amici—sometimes on both sides of the case.159159In Lopez, several states filed in support of the Gun Free School Zones Act. See Brief for the States of Ohio, New York, and the District of Columbia as Amici Curiae in Support of Petitioner, United States v. Lopez, 514 U.S. 549 (1995) (No. 93-1260), 1994 WL 16007793. No state filed in support of Mr. Lopez, but he did get a brief filed by several national organizations representing state and local governments. See Brief of the National Conference of State Legislatures, National Governors’ Association, National League of Cities, National Association of Counties, International City/County Management Association, and National Institute of Municipal Law Officers, Joined by the National School Boards Association, as Amici Curiae in Support of Respondent at 13, United States v. Lopez, 514 U.S. 549 (1995) (No. 93-1260), 1994 WL 16007619 (arguing that “the Commerce Clause does not authorize enactment of the Gun Free School Zones Act”). CLOSE

These cases are high visibility but, we want to suggest, of limited practical importance. They’re just not very promising, given the Court’s capacious understanding of national enumerated powers.160160See generally Raich, 514 U.S. at 15–19; Wickard v. Filburn, 317 U.S. 111, 118–29 (1942). CLOSE The Commerce Clause is very, very broad—and even where it’s not broad enough, there is the Necessary and Proper Clause to fill most gaps.161161See, e.g., United States v. Comstock, 560 U.S. 126, 130 (2010) (upholding broad federal power to imprison sexual predators under the Necessary and Proper Clause); Raich, 545 U.S. at 34–36 (Scalia, J., concurring in the judgment) (arguing that the Necessary and Proper Clause allows Congress to regulate noncommercial activity that affects commerce). CLOSE (In the healthcare case, the Taxing Clause saved the day for the ACA.)162162See NFIB, 567 U.S. at 574 (upholding the ACA under the Taxing Clause). CLOSE We may see occasional wins for states here, but they’re likely—as in Lopez—to be mostly symbolic in their importance.163163See, e.g., Richard H. Fallon, Jr., The “Conservative” Paths of the Rehnquist Court’s Federalism Decisions, 69 U. Chi. L. Rev. 429, 476–77 (2002); Ernest A. Young, Just Blowing Smoke? Politics, Doctrine, and the Federalist Revival After Gonzales v. Raich, 2005 Sup. Ct. Rev. at 1, 39–40 (“A roll-back of the national regulatory state was never in the cards; there are simply too many precedential, institutional, and political constraints pressing the Court to uphold relatively broad federal power.”). CLOSE

The more significant cases are those in which Congress seeks to enlist state officials to implement federal law but arguably lacks power to do so. Most federal programs rely on state and local officials for enforcement and implementation. Polarization makes states governed by the party that is out of power in Washington particularly likely to want to opt out of such programs. Under the Anti-Commandeering Doctrine, Congress can’t require state officials to implement federal policy.164164See Printz v. United States, 521 U.S. 898, 933 (1997); New York v. United States, 505 U.S. 144, 188 (1992). CLOSE Instead, Congress typically conditions federal benefits (usually money) on state cooperation.165165See generally Lynn A. Baker, Conditional Federal Spending After Lopez, 95 Colum. L. Rev. 1911, 1918–19, 1923–31 (1995) (noting the broad potential of conditional spending to circumvent limits on Congress’s enumerated powers). The leading case remains South Dakota v. Dole, 483 U.S. 203 (1987). CLOSE Challengers therefore argue that federal spending conditions are insufficiently clear or amount to federal coercion, as in the Medicaid Expansion portion of the healthcare case166166See NFIB, 567 U.S. at 575. CLOSE or in the current challenges to the Trump order on sanctuary cities.167167See, e.g., City of Santa Clara v. Trump, 250 F. Supp. 3d 497, 507 (N.D. Cal. Apr. 25, 2017). CLOSE Alternatively, states’ claims may focus on whether certain federal requirements really amount to commandeering.168168For example, a thorny question in the sanctuary cities litigation is the extent to which local officials are simply being asked to cooperate with federal law enforcement in the same way any private citizen would have to or are instead being “commandeered” into enforcing federal immigration policy. See, e.g., City of Philadelphia v. Sessions, 280 F. Supp. 3d 579, 597–99 (E.D. Pa. 2017); Alison Frankel, DOJ Wants to Change the Constitutional Conversation in Sanctuary Cities Cases, Reuters (Mar. 7, 2018), https://www.reuters.com/article/us-otc-sanctuary/doj-wants-to-change-the-constitutional-conversation-in-sanctuary-cities-cases-idUSKCN1GJ362 [https://perma.cc/XK63-P8YQ]. CLOSE

This latter class of cases operates within a cooperative federalism context rather than a model of federalism where states have their own exclusive sphere of regulatory jurisdiction outside of federal authority.169169See, e.g., Martin H. Redish, The Constitution as Political Structure 26 (1995) (contrasting “dual” and “cooperative” federalism); Philip J. Weiser, Towards a Constitutional Architecture for Cooperative Federalism, 79 N.C. L. Rev. 663, 665 (2001) (categorizing congressional acts that “invite state agencies to implement federal law” as “cooperative federalism” programs). CLOSE But rather than seeking to control the content of federal policy, these cases generally try to preserve states’ ability to opt out. The Printz litigation that established the anti-commandeering principle for state executive officers did not try to strike down the federal Brady Act; it simply protected the right of state and local officials not to participate in its enforcement.170170See Printz, 521 U.S. at 933–34. CLOSE Likewise, the Medicaid expansion decision established an opt-out right for states.171171See Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 585–88 (2012) (opinion of Roberts, C.J.) (stating that states are free to opt out of the Medicaid expansion while remaining within the original Medicaid program). In some circumstances a robust opt-out right could kill a federal scheme that required cooperation, and at that extreme the difference between trying to limit the scope of federal policy and preserving a right of opt-out dissolves. This may have been Justice Story’s hope, for example, in Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539 (1842). Although Prigg upheld Congress’s power to enact the Fugitive Slave Law and broadly construed its preemptive force, Story may have hoped that the Court’s holding that Congress could not require state and local officials to participate in the law’s enforcement would gut its effectiveness. See id. at 532, 598, 672–73; David C. Currie, The Constitution in the Supreme Court: The First Hundred Years 1789–1888, 245 n.54 (1985). Unfortunately, he turned out to be wrong about that. See Paul Finkelman, Sorting Out Prigg v. Pennsylvania, 24 Rutgers L.J. 605, 664 (1993). CLOSE

Finally, an important class of federal-power claims involves state immunities from federal regulation. These claims arise defensively, typically in response to claims by private litigants.172172The convoluted saga of attempts to avoid state sovereign immunity also includes cases in which individuals with financial claims against states enlist various other sovereign entities, including state governments, to prosecute those claims on the individuals’ behalf. These efforts have not generally had much success. See, e.g., New Hampshire v. Louisiana, 108 U.S. 76, 88–89 (1883) (holding that New Hampshire could not pursue financial claims against another state where New Hampshire had no interest of its own). CLOSE For a brief period during the late 1970s and early 1980s, state and local governments asserted immunities from federal regulation itself under the now-defunct National League of Cities doctrine.173173See Nat’l League of Cities v. Usery, 426 U.S. 833, 852 (1976) (holding that, at least in some circumstances, Congress may not regulate state governmental entities performing traditional governmental functions), overruled by Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 531 (1985); see also Ernest A. Young, State Sovereign Immunity and the Future of Federalism, 1999 Sup. Ct. Rev. at 1, 31–32 (discussing claims under National League of Cities as a species of “immunity federalism”). CLOSE More enduring principles shield state governments from certain judicial remedies when they violate federal requirements. A line of cases stretching back over a century—but intensifying under the Rehnquist Court—recognized a broad principle of state sovereign immunity shielding states from damages claims brought by individuals for violations of federal law.174174See, e.g., Seminole Tribe v. Florida, 517 U.S. 44, 72 (1996); Hans v. Louisiana, 134 U.S. 1, 18 (1890). CLOSE More recent cases have constricted federal civil rights claims against state and local officers for violations of federal statutory requirements.175175See, e.g., Gonzaga Univ. v. Doe, 536 U.S. 273, 276 (2002) (Federal Educational Rights and Privacy Act (FERPA) does not create enforceable private rights under 42 U.S.C. § 1983); Alexander v. Sandoval, 532 U.S. 275, 293 (2001) (concluding no implied right of action for disparate impact discrimination under Title VI). CLOSE States have participated in these cases as both party defendants and extensively as amici (again, often on both sides).176176See, e.g., Brief of Amicus Curiae States of California et al., Supporting the State of Florida, et al., at 4, Seminole Tribe v. Florida, 517 U.S. 44 (1996) (No. 94-12), 1995 WL 17008502 (May 3, 1995) (contending that a statute mandating state participation in federal programs was inconsistent with principles of federalism). CLOSE

These immunity cases differ from most of our examples of state public-law litigation in that they arise defensively—they are not, as it were, examples of AGs like Texas’s Greg Abbott going into work and suing the federal government. Nonetheless, they do seem part of a systematic effort to expand protections for state and local governments under federal law. It seems fair to view Jeffrey Sutton’s successful advocacy of an expansive view of state sovereign immunity in cases like University of Alabama v. Garrett177177531 U.S. 356 (2001). CLOSE and Kimel v. Florida Board of Regents,178178528 U.S. 62 (2000). Judge Sutton, then in private practice at Jones Day, argued both Garrett and Kimel on behalf of the state defendants. Id.; Garrett, 531 U.S. at 356. CLOSE for example, as an extension of his entrepreneurial tenure as State Solicitor of Ohio.179179See also Alexander, 532 U.S. at 276, in which Judge Sutton, in private practice, appeared as counsel of record on behalf of the State of Alabama successfully opposing recognition of a private right of action for disparate impact discrimination under Title VI of the Civil Rights Act of 1964. CLOSE

2. Federal Separation of Powers Claims.—It’s less intuitive to think of States making separation of powers arguments, but one can find examples reaching way back: in 1970, for example, Massachusetts filed an unsuccessful original action in the Supreme Court challenging the constitutionality of the Vietnam War.180180Commonwealth of Massachusetts v. Laird, 400 U.S. 886 (1970); see also id. at 886 (Douglas, J., dissenting) (noting that Massachusetts had authorized the suit by a specific legislative enactment). CLOSE Separation of powers claims have become far more prevalent over the past decade or so. As we’ve noted, polarization tends to cause gridlock, even with a nominally unified government in Washington. And gridlock encourages the President to reach for his pen and phone to get things done.181181See CNN, Obama-I’ve Got a Pen and a Phone, YouTube, https://www.youtube.com/watch?v=G6tOgF\_w-yI [https://perma.cc/AV7E-4AU3] (recording a speech by President Obama, wherein he expressed frustration with congressional gridlock and his intent to take unilateral action). CLOSE Resulting challenges sound in separation of powers, not federalism. But the litigation is motivated by states that are either seeking to protect their own autonomy or to find a way to participate in a national lawmaking process that has shifted from Congress to the Executive Branch.

United States v. Texas—the immigration case—is a good example.182182See 136 S. Ct. 2271, 2272 (2016) (affirming the injunction of the DAPA program and DACA program expansions in Texas v. United States, 86 F. Supp. 3d 591, 606, 678 (S.D. Tex. 2015)). CLOSE When President Obama extended lawful presence to millions of additional undocumented aliens, it was hard to argue that the deferred-action programs (Deferred Action for Parents of Americans (DAPA) and Deferred Action for Childhood Arrivals (DACA)) fell outside the authority of the national government as a whole. Instead, state challengers contended that the President lacked the authority to—as Obama himself put it—“change the law” without going to Congress.183183Brief for the State Respondents, United States v. Texas, 136 S. Ct. 2271 (2016) (No. 15-674), 2016 WL 1213267, at \*1. CLOSE As was clear to all involved, Congress’s general intransigence on the immigration issue meant that a decision against executive authority would be—for all intents and purposes—a decision against federal authority more generally.

A separate set of process arguments are statutory but serve a constitutional purpose. Again, the immigration case is a good example. Texas’s successful argument in the district court was simply that Obama’s policy change had failed to comply with the Administrative Procedure Act (APA) because it had not gone through notice and comment. Notice and comment isn’t an insurmountable hurdle for agency lawmaking, but it does delay implementation of national policy. More importantly, it allows states—like anybody else—to insist on direct input into the federal lawmaking process. It allows states to be heard at the agency just as they are supposedly heard in Congress, although without any special status vis-à-vis other participants. Provisions in the APA for notice and comment, as well as for judicial review of process failures at the agency, effectively operate as separation of powers-type constraints on the administrative state.184184For assessments of the so-called administrative safeguards of federalism, compare Gillian E. Metzger, Administrative Law as the New Federalism, 57 Duke L.J. 2023, 2028, 2101–09 (2008) (asserting that administrative law is well-suited to preserving federalism), with Stuart M. Benjamin & Ernest A. Young, Tennis with the Net Down: Administrative Federalism Without Congress, 57 Duke L.J. 2111, 2114, 2145–54 (2008) (arguing that federalism requires insistence that Congress play the primary role). CLOSE

The separation of powers principle that Congress—not the President—makes the law also generates a second kind of challenge to federal action. That challenge argues that executive action—like the immigration order or the travel ban or the EPA’s clean power plan—is substantively inconsistent with the underlying statute.185185See, e.g., Michigan v. EPA, 135 S. Ct. 2699, 2706 (2015) (considering challenge by twenty-three states to EPA rule regulating air pollutants on the ground that the agency did not consider costs of regulation as required by statute). CLOSE Polarization can cause such claims to multiply. The longer gridlock persists, the more likely that new executive initiatives will stray from the obvious purview of the original legislation. So, for example, states challenged the Obama Administration’s transgender bathroom guidance on the ground that its definition of gender discrimination differs from that of the Congress that enacted Title IX of the Civil Rights Act.186186See Texas v. United States, 201 F. Supp. 3d 810, 815–16 (N.D. Tex. 2016) (granting preliminary injunction on behalf of thirteen states and other plaintiffs). CLOSE Likewise, when federal agencies promulgated broad “preemption preambles” during the George W. Bush Administration, a coalition of states, as well as a state governmental association, filed amicus briefs arguing that these preambles exceeded the agencies’ statutory mandate.187187See Brief of Amici Curiae Vermont, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, West Virginia, Virginia, Washington, Wisconsin, and Wyoming in Support of Respondent at 4, Wyeth v. Levine, 555 U.S. 555 (2009) (No. 06-1249); Brief of the National Conference of State Legislatures as Amicus Curiae Supporting Respondents at 5, Wyeth v. Levine, 555 U.S. 555 (2009) (No. 06-1249), https://www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_07\_08\_06\_1249\_RespondentAmCuNatlConfofStLegis.authcheckdam.pdf [https://perma.cc/2BEW-E7YX]; see also Brief of the Center for State Enforcement of Antitrust and Consumer Protection Laws, Inc. as Amicus Curiae Supporting Respondent at 6, Wyeth v. Levine, 555 U.S. 555 (2009) (No. 06-1249), https://www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_07\_08\_06\_1249\_RespondentAmCuCtrStEnforcementAntitrustandConsProtLaws.authcheckdam.pdf [https://perma.cc/UD4H-NKFK]. On the preemption preambles, see Catherine M. Sharkey, Preemption by Preamble: Federal Agencies and the Federalization of Tort Law, 56 DEPAUL L.REV. 227 (2007). CLOSE

A more difficult class of cases involves litigation challenging federal government inaction. Federal administrative law generally presumes that agency inaction—at least in the form of agency refusals to initiate enforcement proceedings—are not subject to judicial review.188188Heckler v. Chaney, 470 U.S. 821, 832 (1985). CLOSE But this presumption can sometimes be overcome, as it was by Massachusetts v. EPA’s holding that states could challenge the agency’s denial of rulemaking petitions authorized by statute.189189549 U.S. 497, 528 (2007). CLOSE Given Congress’s continued failure to act on climate change, “EPA regulation pursuant to [Massachusetts v. EPA] . . . has served as the core of the US federal efforts on climate change.”190190Hari M. Osofsky & Jacqueline Peel, The Role of Litigation in Multilevel Climate Change Governance: Possibilities for a Lower Carbon Future? 30 Env’t & Plan. L.J. 303, 310 (2013). CLOSE And where an incoming administration seeks to overturn previous executive action—thus arguably returning to the status quo ante of inaction—states may find greater leverage to challenge this departure from the prior baseline. Recent litigation over the Trump Administration’s “repeal” of President Obama’s DACA policy, for example, has gotten significant traction by arguing that the repeal rested on improper reasons.191191See, e.g., Batalla Vidal v. Nielsen, 279 F. Supp. 3d 401, 407, 438 (E.D.N.Y. 2018) (granting preliminary injunction against repeal of DACA program in suit by New York and fifteen other states). Similar litigation challenges the Trump Administration’s effort to overturn President Obama’s “clean power plan.” See, e.g., Richard Valdmanis, States Challenge Trump Over Clean Power Plan, Sci. Am. (Apr. 6, 2017), https://www.scientificamerican.com/article/states-challenge-trump-over-clean-power-plan/ [https://perma.cc/7JK8-A3TZ]. CLOSE State litigation to enforce the Executive’s statutory obligations can thus force adoption and continuation of executive policies even where national-level gridlock would otherwise foreclose them.

3. Federal Rights Cases.—Some state challenges to federal action rely not just on structural principles but also on individual rights arguments. In the travel ban cases, for instance, state governments assert parens patriae standing to raise the rights of their citizens. Sometimes states assert proprietary interests as well; some of the state plaintiffs in the travel ban cases argued that their state universities had been deprived of faculty and students from abroad.192192See Hawaii v. Trump, 859 F.3d 741, 765 (9th Cir. 2017), rev’d on other grounds, 138 S. Ct. 2392 (2018) (“EO2 harms the State’s interests because (1) students and faculty suspended from entry are deterred from studying or teaching at the University; and (2) students who are unable to attend the University will not pay tuition or contribute to a diverse student body.”). CLOSE And sometimes the states participate as amici to express a view on the scope of federal individual rights, as in the same-sex marriage cases.193193See supra notes 10 (Obergefell briefs) and 151 (Windsor briefs). CLOSE

This category also includes state litigation activity contesting federal rights. For example, numerous states have participated as amici opposing Equal Protection challenges to affirmative action in state universities.194194See Lemos & Quinn, supra note 138, at 1257. CLOSE It is even more common to see states opposing rights claims by criminal defendants.195195See id. at 1255–56 (observing that many Republican AG briefs filed in criminal procedure cases are not opposed by state briefs favoring the criminal defendant). CLOSE Similarly, states often play defense against federal civil rights claims brought by private litigants. (These two categories are often related, as many federal civil rights claims involve allegations of improper actions by state or local law enforcement.) In this latter set of cases, state governments are often the defendants; even where they are not (in the many cases against municipalities and their officers, for instance), they may well play a prominent role as amici.196196See, e.g., City of West Covina v. Perkins, 525 U.S. 234, 235 (1999) (Ohio SG Jeffrey Sutton, who had filed an amicus brief on behalf of twenty-nine states, arguing on the city’s behalf by leave of court). CLOSE And in all such cases, other states may support the party asserting federal rights as amici. When he was AG of Minnesota in the early 1960s, for example, Vice President Walter Mondale filed a brief on behalf of twenty-two states urging the Supreme Court to expand the right to counsel in Gideon v. Wainwright.197197372 U.S. 335 (1963). See Yale Kamisar, Gideon v. Wainwright and Related Matters: An Armchair Discussion Between Professor Yale Kamisar and Vice President Walter Mondale, 32 L. & Ineq. 207, 207 (2014) (discussing Mondale’s role in Gideon). CLOSE

As we discuss in more detail in the following Part, these rights cases create the potential for conflicts among states. Whenever state AGs support claims of constitutional rights, they are—in a very real sense—arguing against their own state’s power. More than that, they are seeking to impose a particular rule on all states. Like the statutory challenges described above, then, individual rights cases often involve interstate conflicts over control of federal policy. Those conflicts, moreover, can often be coded as red versus blue. And because they frequently involve “hot button” issues, these cases raise particular risks of politicizing the AG’s office.

4. State Enforcement of State Law that Creates National Regulation.—As we have already noted, the tobacco litigation of the 1990s was a critical watershed for state public-law litigation. To be sure, states have sought to enforce their own laws in ways that affect conditions outside their jurisdictions for a very long time.198198See, e.g., Georgia v. Tenn. Copper Co., 206 U.S. 230, 231, 236 (1907) (hearing the State of Georgia’s public nuisance claim against Tennessee copper companies for discharging noxious gases that crossed the border into Georgia). CLOSE And local governments have also been active in this sort of litigation—for example, in suits against the firearms industry during the 1990s.199199See, e.g., Timothy D. Lytton, Using Tort Litigation to Enhance Regulatory Policy Making: Evaluating Climate-Change Litigation in Light of Lessons from Gun-Industry and Clergy-Sexual-Abuse Lawsuits, 86 Texas L. Rev. 1837, 1843 (2008) (“By the late 1990s, municipalities began suing the gun industry to recover the costs of law enforcement and emergency medical services related to gun violence.”). CLOSE But the most successful efforts have been undertaken by states. Most observers seem to agree that the tobacco litigation ushered in a new era of state activism that then spread to other regulatory areas and types of litigation.200200See, e.g., Nolette, supra note 13, at 23–24. CLOSE

The tobacco litigation and its contemporary analogs share two related features that differentiate them from ordinary state enforcement of state law against private parties. The first is that rather than a single state suing a defendant within its jurisdiction for torts that harmed its citizens, the tobacco litigation featured a broad coalition of states—ultimately including *all* of them.201201Forty-six states, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands, joined the Master Settlement Agreement with the tobacco companies. Four other states—Florida, Minnesota, Mississippi, and Texas—settled their cases separately. Supra note 121 and accompanying text; see also NAAG, supra note 90, at 388. CLOSE And the Master Settlement Agreement that ended the litigation eventually came to include nearly all manufacturers of tobacco in the American market. The litigation thus aimed at global peace—that is, a comprehensive settlement among all the relevant players.

The second point is that the tobacco settlement essentially created a nationwide regulatory regime governing cigarettes.202202Nolette, supra note 13, at 24. The tobacco companies, along with NAAG, petitioned Congress for a national legislative settlement, but no such legislation was ever enacted. Dagan & White, supra note 121, at 369–70. CLOSE It includes, for example, not only payments by the defendants for past harms but also agreements to strengthen warning labels and restrictions on advertising. Because it applies throughout the United States and governs the activities of virtually all tobacco companies doing business here, one could fairly say that it might as well be a federal law.

Similar multistate litigation efforts have imposed quasi-regulatory regimes via comprehensive settlements with major industry players in the pharmaceutical and other industries.203203See Nolette, supra note 13, at 49–59 (offering a detailed account of the pharmaceutical litigation); id. at 25 tbl.2.1 (listing the top fifteen industries targeted in multistate litigation). CLOSE We expect this phenomenon will continue. In the fall of 2017, for example, the Commonwealth of Massachusetts sued the credit-reporting company Equifax following announcement of a data breach that allegedly affected over 140 million consumers.204204See Sarah T. Reise, State and Local Governments Move Swiftly to Sue Equifax, Ballard Spahr Consumer Fin. Monitor (Oct. 3, 2017), https://www.consumerfinancemonitor.com/2017/10/03/state-and-local-governments-move-swiftly-to-sue-equifax/ [https://perma.cc/K24M-P9W7]. CLOSE Massachusetts brought the suit under its own data privacy statute, as well as a more general consumer protection statute. If other states and credit reporting firms are drawn into this litigation, one might well see another comprehensive settlement with terms that would effectively act as, and possibly obviate, national regulation.

5. State Enforcement of Federal Law.—State AGs also can, and do, enforce many aspects of federal law. State enforcement of federal law is pervasive, from antitrust to consumer protection to environmental law.205205See generally Lemos, State Enforcement, supra note 105, at 707–17 (describing the contours of state enforcement of federal laws in a variety of areas). CLOSE As we explained above, this can happen either through explicit statutory authorization or through states relying on more general private rights of action, often asserting parens patriae standing to sue on behalf of their citizens.206206See supra notes 105–10 and accompanying text. CLOSE

On its face, this category of cases may not seem particularly empowering for states, given that AGs are merely enforcing policies that already have been written into federal statutes and regulations. Yet the level of enforcement can have profound consequences for what the law means in practice, and for how regulated entities view their options. That is true even when the law’s substantive requirements are perfectly clear: higher levels of enforcement are likely to increase deterrence by raising the expected sanction for violations.207207See Lemos, State Enforcement, supra note 110, at 737–40 (describing the power of enforcement). CLOSE And when the relevant statutory or regulatory commands are somewhat less than pellucid—as is often the case—state AGs can shape policy on a national scale by pushing particular interpretations of vague or ambiguous federal laws.208208See, e.g., id. at 739–40 (describing how state enforcement has molded federal antitrust doctrine). CLOSE

Thus, the most interesting instances for our purposes are those where state enforcement reflects a disagreement with national enforcement policy. The most salient recent example was Arizona’s effort to ramp up enforcement of federal immigration laws in response to what it saw as an abdication by federal authorities.209209See Arizona v. United States, 567 U.S. 387 (2012) (holding much of Arizona’s effort preempted). CLOSE Another example, with a different political valence, would be Eliot Spitzer’s effort in New York to enforce federal environmental laws more aggressively than the federal EPA had previously been willing to do.210210See Lemos, State Enforcement, supra note 110, at 743–44 (explaining that the EPA was embroiled with lawsuits at the time but that it adopted Spitzer’s legal strategy within a few weeks, bringing a suit against power plants that New York intervened in). We leave to one side here the converse scenario, which occurs when states refuse to enforce federal law or repeal state laws that parallel federal laws. These state decisions may also significantly undermine or affect federal policy. For example, Colorado’s decision to end state prohibition of most marijuana use made it significantly more difficult for federal authorities to further national drug policies in that state. See generally Ernest A. Young, Modern-Day Nullification: Marijuana and the Persistence of Federalism in an Age of Overlapping Regulatory Jurisdiction, 65 Case W. Res. L. Rev. 769, 774–76 (2015). CLOSE

Like the multistate cases described above, state enforcement of federal law can create the equivalent of regulatory policy nationwide. Given the interconnectedness of the national market, it’s hard to confine the effects of state enforcement within a particular state’s borders. If New York aggressively pursues Microsoft, Washington may feel aggrieved. And if pro-environment states undermine the fortunes of big oil companies, the oil-producing states may share in the consequences.

### Solvency---AT: No State Enforcement---Expertise

#### State AGs have top-notch expertise AND can bring in outside counsel

Nikko Price 20, JD from Yale Law School, “Better Together? The Peril and Promise of Aggregate Litigation for Trafficked Workers”, Yale Law Journal, 129 Yale L.J. 1214, February 2020, Lexis

The parens patriae power also brings more bodies into the enforcement arena. And these are not just any bodies; they are lawyers with the zeal and mandate to protect the public. This expansion of enforcement to the offices of [\*1266] state attorneys general is particularly important in the fight against a problem as pervasive as labor trafficking. It touches every single state in the country and affects "both rural and urban areas . . ., with victims who are both U.S. citizens and migrant workers of any gender, race, and sexual orientation." But cracking down on labor trafficking today is often difficult because investigators simply cannot identify or establish contact with victims. Bringing state attorneys general into the fold can exponentially expand these efforts: not only can attorneys general direct law enforcement to conduct investigations, but they can also conduct investigations themselves. This is possible because many offices of state attorneys general maintain in-house, full-time, and experienced investigators.

These numerical advantages are amplified by the capacity of state attorneys general to leverage the capital resources and expertise of the private bar and public-interest lawyers. State attorneys general routinely retain outside lawyers on complex cases, entering into contingent-fee arrangements in which outside counsel fronts the costs of investigation and litigation. The rest of the reward [\*1267] goes to the state, which in turn distributes funds to compensate the injured parties and other stakeholders. Examples of this model of public-private collaboration at the state level abound, from the famous tobacco litigation of the 1990s to the vitamins litigation in the early 2000s and the massive suits against lead-paint manufacturers, Microsoft, and health-maintenance organizations.

#### Especially for antitrust

Harry First 1, Professor of Law at the New York University School of Law, “Pyrrhic Victories? Reexamining the Effectiveness of Antitrust Remedies in Restoring Competition and Detterring Misconduct: Delivering Remedies: The Role of the States in Antitrust Enforcement”, George Washington Law Review, 69 Geo. Wash. L. Rev. 1004, October / December 2001, Lexis

Low pay does not mean that state enforcers are competent, of course. Nevertheless, the data for state antitrust enforcement provided above indicate a high level of ability, at least if success is a measure of ability. As shown in Table 4, New York successfully obtained a wide range of remedies in the cases that it concluded in the period under study, including divestitures and dissolutions. As shown in Table 5, multistate efforts in which New York participated resulted in recoveries of nearly half a billion dollars in the two years under study, with benefits to New York state consumers and taxpayers of nearly $ 35 million. It is hard to believe that such results could have been achieved by lawyers with the low level of competence that Posner ascribes to state antitrust attorneys.

### Solvency---AT: Patchwork---2NC

#### The text fiats coordination through NAAG---that ensures uniformity

HLR 20 – Harvard Law Review, “Antitrust Federalism, Preemption, and Judge-Made Law,” 6/10/20, https://harvardlawreview.org/2020/06/antitrust-federalism-preemption-and-judge-made-law/

D. The Misaligned Incentives Problem

Fourth, in the misaligned incentives problem, critics argue that states do not have proper incentives when they enforce state antitrust laws. Although state antitrust laws are supposed to mainly target intrastate antitrust violations, courts have refused to police that limit too strictly. In an interconnected economy where seemingly hyperlocal activity can have national implications, courts have admitted that limiting state antitrust laws to cases that do not touch the national economy would “fence[] off” “a very large area . . . in which the States w[ould] be practically helpless to protect their citizens.” But, even though suits under state laws may have nationwide consequences, state attorneys general lack nationwide incentives. Critics of the status quo worry that elected attorneys general are more susceptible to lobbying by state interests than are appointed federal enforcers and that a cost-benefit analysis is flawed where a state can attack a company headquartered out of state in order to protect one headquartered in state.

These fears seem mostly imagined. The idea that elected attorneys general are bringing antitrust suits to hurt competitors of state businesses“appears to [have] little empirical support[,] . . . and none has been provided by the advocates of this position.” Past state antitrust enforcers have stated that, while they considered state-specific factors when deciding where to spend their limited resources, those factors would be used only to choose “from among those cases that also made sense on traditional economic grounds.”

And there is reason to believe that these enforcers are telling the truth. For one thing, states often make antitrust decisions that seem to go against the interests of major state employers. For example, New York antitrust enforcers have taken antitrust positions adverse to both Verizon and IBM, top New York employers. For another, a state that is only minutely affected by an antitrust action is unlikely to bring that action alone. If a state is only trivially affected by allegedly anticompetitive conduct, “that state is very unlikely as a practical and political matter to spend the enormous sums of money required to sustain a challenge.” If a state is majorly affected but is the only state affected, then the misaligned incentives critique does not apply because there is no competing set of national incentives. And in a case that actually has major impacts in multiple states, it is unlikely that one state could act without other states wanting to join in on the enforcement. When states work together on antitrust enforcement, they tend to cooperate closely with one another, especially through the National Association of Attorneys General’s (NAAG) antitrust group. Even if an individual state might be swayed by state-specific concerns, it is unlikely that it could convince a multistate coalition to act on those concerns — the group would be forced to evaluate the action on its more national merits.

E. The Incompetent States Problem

Finally, critics argue that state enforcers will make error-ridden antitrust choices due to a lack of resources, experience, and expertise. Whereas federal enforcers have significant budgets for antitrust enforcement, the percentage of funding set aside for antitrust enforcement by state attorneys general is minute. Because of this lack of resources, state enforcers have been accused of staffing antitrust cases with senior attorneys who, while experienced in civil litigation generally, are antitrust novices. These factors have led critics to argue that state attorneys general handle antitrust suits poorly, clogging the judicial pipeline with questionable suits. State attorneys general are accused of acting as free riders on federal actions and of making settlements more difficult rather than undertaking useful enforcement.

But there is reason to dispute critics’ claims. The critique of individual attorneys general ignores the states’ ability to work in unison. Cooperating through NAAG, states are able to build on each other’s experiences in antitrust enforcement. Thus, worries about inexperienced antitrust divisions working alone may be overstated. Although interstate coordination may weaken their point, critics can retort that most state actions are not coordinated: according to NAAG’s State Antitrust Litigation Database, only nineteen of the fifty-six civil antitrust actions brought by states between 2014 and 2019 were brought by multiple states working together, although many of the noncooperative suits regarded intrastate anticompetitive conduct. This same dataset, however, also undermines the critics’ argument that states act only as free riders: only nineteen of the fifty-six suits included federal participation. Finally, much of the criticism leveled at state attorneys general occurred before a renaissance in state law enforcement. Since Judge Posner derided the skill of state attorneys general in 2001, lawyers and judges, including Chief Justice Roberts, have recognized a marked improvement in state attorney offices’ advocacy. Whether or not Judge Posner’s critiques were valid at the turn of the century, it is unclear that the landscape remains the same today. Finally, this critique undermines the arguments, noted earlier, that state law enforcement is overdeterring competition or creating a patchwork of antitrust law. If states are nothing but free riders, then we need not worry about overdeterrence.

#### The link to disunity is backwards:

#### a) Uniform 50 state action is consistent AND displaces otherwise inevitable ad hoc state enforcement

Clark L. Hildabrand 14, JD Candidate at Yale Law School, BA from Washington & Lee University, “Interactive Antitrust Federalism: Antitrust Enforcement in Tennessee Then and Now”, Transactions, Volume 16, Issue 1, 16 Transactions 67, Lexis

State antitrust laws and enforcement also encourage greater consistency in antitrust enforcement over time by weakening barriers to enforcement from financial, jurisdictional, and political restrictions. First, dual enforcement of antitrust regulations allows access to the resources of both the federal government and state governments. Government agency budgets certainly are not immune to reductions and limitations in times of fiscal difficulty. The DOJ's Antitrust Division announced in 2012 that it planned to close four field offices following the 2013 budget process in an effort to reduce costs. According to Judge Dan Polster, who presides over the United States District Court for the Northern District of Ohio and started his career in the Cleveland field office of the Antitrust Division, closing the field offices will reduce the DOJ's ability to prosecute regional antitrust cases and resolve local price fixing disputes. These cases "really have a direct impact on [the] local economy and people's pocket books," but the DOJ Antitrust Division has turned its focus toward larger domestic and international cases. Encouraging state enforcement of state and federal antitrust statutes may alleviate concerns about a lack of regional enforcement. State attorneys general can pool their resources for enforcement and even appear together as amici curiae to better inform courts as to the interests of state consumers. One widespread fear was that states might pool their resources in order to pursue protectionist litigation in their mutual favor, and to the disadvantage of a few states. In response to this criticism, Congress dramatically limited the availability of multistate actions "by requiring that any state enforcement action take place 'in any district court of the United States in that State or in a State court that is located in that state and that has jurisdiction [\*75] over the defendant.'" Thus, state antitrust enforcement and limited regional pooling enable greater consistency in antitrust enforcement even in the presence of shifting federal priorities.

#### b) Federal action is splintered between the DOJ, FTC, and private rights of action AND also inevitably implemented by divergent state interpretations

Margaret H. Lemos 11, Associate Professor at the Benjamin N. Cardozo School of Law, Former Furman Fellow and Program Coordinator at New York University School of Law, Bristow Fellow at the Office of the Solicitor General, and Law Clerk for Judge Kermit V. Lipez of the U.S. Court of Appeals for the First Circuit and U.S. Supreme Court Justice John Paul Stevens, “State Enforcement of Federal Law”, New York University Law Review, Volume 86, 86 N.Y.U.L. Rev. 698, June 2011, Lexis

A final factor that bears on the potential for disuniformity is the breadth of the relevant federal rule. While many federal statutes are written in sweeping terms, that is not always the case - as the phthalates ban discussed in the previous Part demonstrates. And much state enforcement of federal law entails enforcement of agency regulations, which on the whole tend to be more specific than the statutes that inspire them. The few scholars who have taken notice of state enforcement have focused primarily on antitrust law. But antitrust is an extreme and unusual example, not only because of the breadth of the relevant statutory language, but also because it is an area where no federal agency has the authority to adopt binding regulations clarifying [\*759] the statutory text.

[FOOTNOTE] 271 It bears emphasis that antitrust is also an area where state law is not preempted. See supra note 256. Moreover, even if state antitrust law were preempted and states were prohibited from enforcing federal antitrust law, federal law would still permit private antitrust suits and divide federal enforcement authority between the FTC and the antitrust division of the DOJ. Thus, while the risk of disuniformity may be particularly stark in the antitrust context, given the breadth of the relevant federal rule, it is far from clear that states' authority to enforce federal law is the root of the problem. Other contributing factors, including the splintering of federal enforcement authority, the availability of private rights of action, and the continued validity of divergent state laws, are at least as important - and probably more so. [END FOOTNOTE]

That scenario is not unique, but it is fairly rare. To return to the FTC example above, the FTC Act's prohibition of "unfair" practices is quite broad. The FTC's interpretation of the prohibition, embodied in the 1980 Policy Statement and later codified in the statute, is far more limited. Should state attorneys general be given authority to enforce the FTC Act in federal court (as NAAG has suggested ), they would be constrained by the FTC's interpretations and by the body of case law that has developed in response to FTC enforcement efforts. Both limitations differentiate state enforcement of federal law from state enforcement of state law and help explain why the former may be tolerable even when the latter is preempted.

#### States are only a backstop to federal under-enforcement---they can’t create runaway or inconsistent litigation

--litigation must still go through the courts, which can reject baseless claims

--the fed can weigh in and oppose state litigation, which courts will consider

--the states will never ‘displace’ federal regulators, only create a backstop where there’s inaction

Philip J. Weiser 20, Hatfield Professor of Law and Telecommunications, and Executive Director and Founder of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, JD from New York University School of Law, Colorado Attorney General, BA from Swarthmore College, “The Enduring Promise of Antitrust”, Loyola University of Chicago Law Journal, 52 Loy. U. Chi. L.J. 1, Fall 2020, Lexis

In a later speech, DOJ Antitrust Division Chief Makan Delrahim defended the DOJ's position. He argued that allowing states to bring antitrust actions of their own "creates the risk that a small subset of states, or even perhaps just one, could undermine beneficial transactions and settlements nationwide." Moreover, he suggested that states should not be authorized to seek any "relief that is incompatible with relief secured by the federal government." This concept of federal supremacy is incorrect and ignores the fact that states can enforce the federal antitrust laws only by bringing cases in federal court. If states advance claims that are unfounded and would undermine procompetitive mergers, the courts will reject them. And the courts can, of course, take into account any action or decision by the federal antitrust agencies in assessing a state's claims, just as the Court in Philadelphia National Banktook into account the actions of federal bank regulatory agencies. But there is no basis in the statutes, the cases, or sound policy for a decision by a federal agency to preclude the states from exercising their rights under the antitrust laws by asking a federal court to prevent or provide remedies for a violation of those laws.

Although the court ruled against the states in the T-Mobile case, Judge Marrero declined to adopt Delrahim's proposed limit on the states' role. Rather than reject the states' authority to bring the action, the court [\*7] evaluated the case on the merits, noting that the views of federal regulators can be informative, but are not conclusive. To be sure, the presence of a remedy - a fix to the harm occasioned by the merger, as it were - is a fact of life that the litigating states and the court rightly had to address. Similarly, the DOJ would also need to "litigate the fix" if another federal regulatory agency (say, the FCC) adopted a remedy in the face of a DOJ merger challenge. But to face challenges in litigation is a far cry from being barred from the courtroom.

In short, the states are partners in antitrust enforcement, reflecting the cooperative federalism architecture adopted by Congress. In effect, Congress has empowered states to act as a check on federal enforcement, or, more precisely, on instances of federal underenforcement; as such, it declined to allow federal inaction or preference for particular remedies to remove the states from antitrust enforcement. In this sense, the central question is not - as the DOJ suggests - whether states might "displace the federal government's role as the nation's federal antitrust enforcer," but rather whether states are positioned to pick up any slack and ensure that important issues are raised before the courts, whether or not the federal agencies are inclined or able to do so.

### Solvency---AT: Certainty

#### ‘Uncertainty’ assumes non-uniform state law---the CP avoids that

Rachel Arnow-Richman 20, Visiting Professor at the University of Florida Levin College of Law, Chauncy Wilson Memorial Research Professor at the University of Denver, Sturm College of Law, L.L.M. from Temple Law School, J.D. from Harvard Law School, B.A. from Rutgers University, “The New Enforcement Regime: Revisiting the Law of Employee Competition (and the Scholarship of Professor Charles Sullivan) with 2020 Vision”, Seton Hall Law Review, 50 Seton Hall L. Rev. 1223,

To the extent we conceive of restrictions on employee mobility as an antitrust matter, it is squarely within federal jurisdiction. See Glick, supra note 1, at 404-417 (applying antitrust principles). In addition, federal legislation would create welcome uniformity. See Moffat, supranote 34, at 965. The variation in state laws thus far will doubtlessly pose enormous compliance challenges for employers. On the single issue of vulnerable worker status, for instance, no two state laws passed thus far use precisely the same criteria in establishing the relevant income threshold. See supranote 36 and accompanying text. It is possible that the desire for consistency and lower compliance costs could incent employers to support model or uniform state legislation that, while limiting the enforceability of noncompetes, would achieve greater predictability. The Uniform Law Commission in 2018 appointed a study committee to explore the matter. See https://www.uniformlaws.org/projects/committees/study. As of yet, however, it has issued no proposals.

#### ‘Regulatory uncertainty’ is unproven AND counterbalanced by efficiency benefits of localized variation

Harry First 9, Charles L. Denison Professor of Law at the New York University School of Law, “Modernizing State Antitrust Enforcement: Making the Best of a Good Situation”, The Antitrust Bulletin, Volume 54, Number 2, Summer 2009, p. 295-297

III. MODERNIZING STATE ANTITRUST ENFORCEMENT

A. The good situation

1. THE CASE FOR STATE ENFORCEMENT—The debate over state antitrust enforcement is basically about whether antitrust enforcement should be centralized or decentralized. A number of arguments support decentralization of enforcement. One is that decentralization of the institutions of antitrust enforcement produces policy diversification. 41 Different agencies can reflect different constituencies and interests; they can also develop different competencies and specializations. This policy diversification reduces the risk that violations will go unremedied. A second argument is that different enforcement institutions may have different resource commitments and constraints. It may be the case that having two organizations with different sources of funding or somewhat different missions may provide broader enforcement than a single agency could. A third argument relates to the constitutional structure of public enforcement agencies. Central enforcement agencies often need the factual and political support of more local agencies, particularly when cases involve local interests. The availability of decentralized enforcement institutions can provide that support.

Those who favor centralization argue the advantages of policy uniformity. A single agency increases the coherence of policy choices by avoiding contradictory results. The broader the jurisdictional competence of a single agency, the better able it will be to internalize all the social costs and benefits of any particular decision, leading to better policy choices. With one agency there is no opportunity for a complainant, who may want to use government antitrust enforcement to restrict the conduct of a more successful business rival, to engage in forum shopping to seek the most pro-enforcement agency. A single enforcement agency might also have the size to achieve economies of scale in its operations, making it a more efficient enforcer. Finally, a centralized agency would reduce compliance costs. Not only would regulatory duplication be avoided, but regulatory uncertainty would also be avoided. Parties would have a clearer understanding of enforcement policies and could be more certain as to whether particular business practices comply with the law or not.

The dispute between decentralization and centralization needs both theory and empiricism for its resolution. The theory part involves considering the four dimensions along which enforcement competition can occur: 1) yardstick competition, which enables the performance of one agency to be measured against its peers42; 2) regulatory competition, which pressures legislators to compete for votes pr resources by offering more attractive regulatory regimes43; 3) innovation competition, in which competitive pressures may move maverick players to experiment, forcing dominant players to copy successful experimental outcomes44; and 4) norms competition, in which the presence of different enforcement views helps insure the vigorous policy debate which has been so critical in shaping antitrust enforcement norms.45

I think that these four dimensions of enforcement competition make out a strong theoretical case for the diversification that the states can bring to antitrust enforcement. The empirical effort that the AMC undertook to review state enforcement does not support the concerns that many have had about decentralization and also provides some indication of positive benefit (the states’ general willingness to provide monetary relief to indirect purchasers I take as a virtuous example of diversified enforcement). One must of course recognize that each side of the debate generally has its own specific examples and counter-examples and that some aspects of the debate remain unproved (the question of scale economies in enforcement and the uncertainty costs connected with regulatory diversity, to take two important examples).

#### Uncertainty is inevitable because of FTC/DOJ splits and private enforcement

Donald L. Flexner 94, JD from NYU School of Law, and Mark A. Racanelli, JD from the Georgetown University Law Center, “Merger Control and State Aids Panel: State and Federal Antitrust Enforcement in the United States: Collision or Harmony?”, Connecticut Journal of International Law, 9 Conn. J. Int'l L. 501, Summer 1994, Lexis

While it is the purpose of this paper to explore in detail the nature, extent and effects of the schism between federal and multi-state antitrust enforcement, it is useful first to examine in greater depth the historical context of the dispute. Even before the states became significant antitrust enforcers, consistency and predictability in the law was difficult to achieve. In the first place, the FTC and the Antitrust Division have long had concurrent authority to enforce the federal antitrust laws (except for criminal prosecutions which only the Antitrust Division can bring), and these agencies have not always agreed. For example, historically, the FTC has pursued price discrimination cases while the Division has not, and the FTC probably has been tougher on mergers between competitors than the Antitrust Division. While these agencies have established a "clearance" process that allocates responsibility for a given investigation to one agency, such a process does not prevent them from taking conflicting positions in adjudicatory proceedings, or seeking conflicting legal interpretations and results.

In addition to these sources of confusion and conflict, private plaintiffs, whether consumers or competitors, also can sue under the Sherman and Clayton Acts for treble damages and injunctive relief. These so-called "private attorneys general" have no goal but winning, and the development of the law is influenced heavily by judicial decisions in private antitrust litigation. Indeed, in any given year, private antitrust opinions far [\*503] outnumber all cases brought by federal and state agencies. Notwithstanding the potential for confusion arising from an enforcement system with so many different plaintiffs, certain clear direction lines emerged in courts and the federal enforcement agencies during the 1960s and 1970s.

### Solvency---AT: Preemption---2NC

#### Enforcement beyond federal baselines can’t be preempted

--there’s established ‘cooperative federalism’: the fed sets a baseline for antitrust and states can go beyond that

--their ev mostly doesn’t apply: ‘preemption’ is about state anticompetitive behavior, not antitrust enforcement

--Congress supports this, so even if there’s a legal case, they won’t attempt to preempt

--the Supreme Court recognizes this, so they’ll strike down preemption

Philip J. Weiser 20, Hatfield Professor of Law and Telecommunications, and Executive Director and Founder of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, JD from New York University School of Law, Colorado Attorney General, BA from Swarthmore College, “The Enduring Promise of Antitrust”, Loyola University Law Journal, 52 Loy. U. Chi. L.J. 1, Fall 2020, https://coag.gov/blog-post/prepared-remarks-the-enduring-promise-of-antitrust/

I. The Role of the States in Antitrust Enforcement

During the 1970s, Congress began to develop a range of "cooperative federalism" regulatory programs. Under such programs, Congress authorizes state enforcement of federal law and generally calls on the federal government to set a floor for enforcement. In so doing, it generally provides states with additional authority to tailor standards as well as pick up any slack in enforcement. By instituting such a model, Congress [\*2] adopted a hedging strategy - ensuring a base level of uniformity, allowing for appropriate experimentation, and building in the opportunity to pick up the slack as to any underenforcement at the federal level.

The environmental laws provide the classic example of cooperative federalism in action, with the Clean Air Act being a clear case in point. Under the Clean Air Act's model, the Environmental Protection Agency (EPA) authorizes state agencies to address air pollution using a variety of tools, provided that they ensure a basic level of air quality. Where state agencies decide to go above the level specified by the EPA, they are permitted to do so. Following this precedent, both telecommunications regulation and health care policy later adopted a cooperative federalism architecture, blending state and federal authority and calling on state agencies to develop and enforce federal regulatory standards.

Antitrust law operates in a functionally similar manner to other cooperative federalism regimes. In 1976, by adopting the Hart-Scott-Rodino Antitrust Improvements Act, Congress embraced the ability of state AGs to enforce federal antitrust law on behalf of their states, using what is called "parens patriae" authority. The theory of this delegation of authority, like other cooperative federalism programs, is twofold: (1) states may be better positioned to know of competitive issues in their jurisdictions; and (2) states may have a greater willingness to take action and have the ability to collect damages on behalf of their citizens, thereby further advancing the goals of antitrust law. As the Supreme Court stated, the role of states in antitrust enforcement "was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition."

One of the questions inherent in a cooperative federalism framework is whether the federal government has the authority to prevent states from going further than the federal government where, in their view, local conditions warrant. In the environmental arena, the EPA has the authority [\*3] to ensure a minimum level of enforcement, but not to prevent states from taking additional action. In the antitrust arena, the situation is similar: the federal government can take action to ensure a basic level of enforcement, but it does not have the power to prevent states from going further - under federal or state law - to stop anticompetitive conduct.

#### The Fed won’t preempt, even if they could, because they need reciprocal state support to limit Parker immunity

--'Parker immunity’ refers to the ‘state action doctrine’ that courts have applied to state-based antitrust violations. Without states acceding to federal demands for political reasons, the fed could not stop state-level anticompetitive behavior

--there’s a QPQ: states don’t fully assert Parker immunity in exchange for the Fed accommodating state antitrust enforcement

--the Fed understands this and values antitrust enforcement over Commerce Clause concerns, so they won’t attempt preemption

Dr. Michael S. Greve 5, Professor at the George Mason University School of Law, PhD and an MA in Government by Cornell University, “Cartel Federalism? Antitrust Enforcement by State Attorneys General”, University of Chicago Law Review, Volume 72, Issue 1, 72 U. Chi. L. Rev. 99, Winter 2005, Lexis

IV. An Exchange Theory of Antitrust Federalism

The model so far fails to explain, first, state enforcers' curiously narrow view of state action immunity, and, second, the federal government's accommodation of the states' aggressive demands for enforcement authority. Federal agencies might oppose those demands for good reasons -- for example, a concern over interstate or international spillovers, or a concern that an aggressive state role might distort national antitrust priorities. But while considerations of this sort have recently prompted calls by some federal officials for improved protection of federal priorities against state interference and for some form of sorting federal from state antitrust responsibilities, the general pattern has been federal accommodation to the states' demands for an expanded role. The list of federally supported -- or at least unopposed -- extensions of state authority includes "indirect purchaser" actions under state law, state divestiture remedies, state antitrust jurisdiction over foreign corporations, and the right of states to pursue equitable remedies even after the defendant's entry of a settlement with federal authorities.

One can interpret these seemingly odd positions -- the states' consistent support for the federal government's bid to limit Parker immunity, and the federal government's equally consistent failure to assert federal prerogatives against the states -- as two sides of a single bargain. On this interpretation, state enforcers have supported the federal position on state action to obtain maneuvering room for state antitrust actions that the federal government might otherwise oppose. Conversely, the federal government has tolerated the expansion of state enforcement authority to make progress at the state action front.

One highly suggestive piece of evidence is the amici states' position in Ticor, where the majority states portrayed a demanding state action requirement and especially its "active supervision" prong as a [\*118] pristinely federalist position. That line of reasoning has been described as "not easy to understand" and as a "challenge to historians." Notwithstanding the Ticor Court's insistence that "states must accept political responsibility for actions they intend to undertake," little in economic theory, and less in federalism theory, recommends that ruling. Someone has to supervise the states' "active supervision," and that "someone" cannot be the citizens in the various states; it has to be the FTC. There may be reasons for such an arrangement, but state autonomy and local accountability cannot be among them.

In fact, Ticor presented the FTC and the U.S. Solicitor General with a massive federalism problem. Among the obstacles was an effusively "federalist," pro-immunity decision by then-Judge Anthony Kennedy in a case presenting very similar questions. Predictably, Ticor played the federalism angle and especially the opinion of Kennedy -- by then, a crucial vote on an increasingly federalism-friendly Supreme Court -- to the hilt. The majority states' brief allowed the federal government, which had theretofore ignored Ticor's federalism [\*119] argument, to denounce that argument as rank opportunism. Justice Kennedy's explicit reliance on the majority states' averments suggests that the FTC might well have lost the case but for the states' support.

If the federal government had every reason to seek the states' support, the states had equally good reasons to lend it. The Ticor briefs were submitted shortly before a certiorari petition in Hartford Fire Insurance Co v California, then described by a leading state antitrust enforcer as "the biggest and most important civil case . . . pending in the United States." The states had initiated the Hartford litigation despite the FTC's severe misgivings, and there was every reason to think that the outcome could well depend on the U.S. government's position before the Supreme Court -- which was by no means a foregone conclusion at the time of Ticor. Lo, at the end of the day, in Hartford the federal government deferred to the states.

The proximity and parallelism between the states' and the federal enforcers' interests do not imply some outright quid pro quo. An explicit bargain actually seems unlikely, since both sides sport multiple institutional actors who cannot easily commit their sister agencies, let alone their successors in interest. Moreover, the analysis is meant to capture the political economy of the federal-state transaction (which the economics literature treats under the heading of "incomplete contracts"), not its social dimension (which will to the participants look like collegial, if not frictionless, "networked enforcement"). So understood, though, the stipulated logic fits, and may help to explain, the trajectory of federal-state antitrust relations from confrontation during the Reagan years to increased cooperation since the first Bush administration and to this day. Throughout, state-sponsored cartels [\*120] were a top enforcement priority for the FTC, under both Republican and Democratic administrations. Federal enforcers soon realized that state opposition often impedes federal enforcement at this front, and that state support is worth something. Conversely, an aggressive state agenda requires federal accommodation. The broad enforcement powers of state authorities, from divestiture remedies to indirect purchaser actions, may now be settled law. But that was not true twenty-five years ago, when state attorneys general aspired to play a more prominent role in antitrust law. At that time, the states needed federal accommodation, both in the everyday enforcement process and in high-stakes cases involving questions of federal preemption and prerogatives, where the federal government's official position often makes a crucial difference. And one of the few meaningful concessions the states had to offer was their support for federal enforcement efforts that might otherwise be perceived as nationalist intrusions into "states' rights."

#### Biden and the Dem Congress will support state antitrust

Dylan Jackson 21, Writer for the National Law Journal, Senior Staff Writer at The American Lawyer, BA in Journalism from the University of Missouri-Columbia, AA from Valencia College, “Shifting Scrutiny: State AG Practices Prepare for New Priorities Under Biden”, National Law Journal, 1/3/2021, https://www.law.com/nationallawjournal/2021/01/03/shifting-scrutiny-state-ag-practices-prepare-for-new-priorities-under-biden/?slreturn=20210602160610

For the last four years, state attorneys general practices at law firms have been operating and growing in a space where leading state prosecutors were often working against the federal government. That dynamic is about to change, and it will only further their growth and activity.

Big Law state attorneys general practices are anticipating President-elect Joe Biden’s administration to strengthen the regulatory powers of state AGs through greater collaboration in areas such as civil rights, environmental and antitrust enforcement.

The extra muscle, attorneys say, will allow AGs to compound their platforms, as well as divert precious resources to “core functions” such as financial, consumer and tech fraud—a dynamic that is sure to bring more scrutiny to companies and corporate clients.

“The pendulum will swing from state AGs being the primary civil rights enforcers to the federal government. That relieves pressure on the states to focus on core functions,” said Daniel Suvor, co-chair of O’Melveny & Myers’ state AGs practice group.

State AG practices have become an increasingly popular practice area in Big Law. The growing list of firms with this offering includes Holland & Knight, Crowell & Moring; Blank Rome; O’Melveny & Myers; Cozen O’Connor; Wilmer Cutler Pickering Hale and Dorr; Squire Patton Boggs; Cadwalader, Wickersham & Taft; King & Spalding; and Alston & Bird. Attorneys who head these practices represent clients that are regulated by AGs, in industries including technology, retail and pharmaceuticals. Suvor and O’Melveny, for example, represent Johnson & Johnson, which is facing roughly 2,000 lawsuits, including those brought by a coalition of Democratic and Republican AGs.

Under the Trump administration, the federal government was a lax enforcer in areas like civil rights and environmental regulation, making for fewer lawsuits and investigations into allegedly offending companies. In that vacuum, state AGs such as California Democratic Attorney General Xavier Becerra had to fill the void by committing attorneys and resources to fighting federal environmental regulatory rollbacks.

“Our clients are going to have an active federal government again. On top of that, they won’t be able to ignore state AGs,” Suvor said.

“State AGs have often been overlooked by large corporations. That has changed in the last few years,” he explained. “Now, clients are going to have to think about both federal and state enforcement at the same time.”

## Politics

### AT: No Extinction

#### Nuke war causes extinction.

Steven Starr 17, director of the University of Missouri's Clinical Laboratory Science Program and senior scientist at the Physicians for Social Responsibility, 1/9/2017, “Turning a Blind Eye Towards Armageddon—U.S. Leaders Reject Nuclear Winter Studies,” <https://fas.org/2017/01/turning-a-blind-eye-towards-armageddon-u-s-leaders-reject-nuclear-winter-studies/>, pacc

The detonation of an atomic bomb with this explosive power will instantly ignite fires over a surface area of three to five square miles. In the recent studies, the scientists calculated that the blast, fire, and radiation from a war fought with 100 atomic bombs could produce direct fatalities comparable to all of those worldwide in World War II, or to those once estimated for a “counterforce” nuclear war between the superpowers. However, the long-term environmental effects of the war could significantly disrupt the global weather for at least a decade, which would likely result in a vast global famine.

The scientists predicted that nuclear firestorms in the burning cities would cause at least five million tons of black carbon smoke to quickly rise above cloud level into the stratosphere, where it could not be rained out. The smoke would circle the Earth in less than two weeks and would form a global stratospheric smoke layer that would remain for more than a decade. The smoke would absorb warming sunlight, which would heat the smoke to temperatures near the boiling point of water, producing ozone losses of 20 to 50 percent over populated areas. This would almost double the amount of UV-B reaching the most populated regions of the mid-latitudes, and it would create UV-B indices unprecedented in human history. In North America and Central Europe, the time required to get a painful sunburn at mid-day in June could decrease to as little as six minutes for fair-skinned individuals.

As the smoke layer blocked warming sunlight from reaching the Earth’s surface, it would produce the coldest average surface temperatures in the last 1,000 years. The scientists calculated that global food production would decrease by 20 to 40 percent during a five-year period following such a war. Medical experts have predicted that the shortening of growing seasons and corresponding decreases in agricultural production could cause up to two billion people to perish from famine.

The climatologists also investigated the effects of a nuclear war fought with the vastly more powerful modern thermonuclear weapons possessed by the United States, Russia, China, France, and England. Some of the thermonuclear weapons constructed during the 1950s and 1960s were 1,000 times more powerful than an atomic bomb.

nuclear-firestrom

During the last 30 years, the average size of thermonuclear or “strategic” nuclear weapons has decreased. Yet today, each of the approximately 3,540 strategic weapons deployed by the United States and Russia is seven to 80 times more powerful than the atomic bombs modeled in the India-Pakistan study. The smallest strategic nuclear weapon has an explosive power of 100,000 tons of TNT, compared to an atomic bomb with an average explosive power of 15,000 tons of TNT.

Strategic nuclear weapons produce much larger nuclear firestorms than do atomic bombs. For example, a standard Russian 800-kiloton warhead, on an average day, will ignite fires covering a surface area of 90 to 152 square miles.

A war fought with hundreds or thousands of U.S. and Russian strategic nuclear weapons would ignite immense nuclear firestorms covering land surface areas of many thousands or tens of thousands of square miles. The scientists calculated that these fires would produce up to 180 million tons of black carbon soot and smoke, which would form a dense, global stratospheric smoke layer. The smoke would remain in the stratosphere for 10 to 20 years, and it would block as much as 70 percent of sunlight from reaching the surface of the Northern Hemisphere and 35 percent from the Southern Hemisphere. So much sunlight would be blocked by the smoke that the noonday sun would resemble a full moon at midnight.

Under such conditions, it would only require a matter of days or weeks for daily minimum temperatures to fall below freezing in the largest agricultural areas of the Northern Hemisphere, where freezing temperatures would occur every day for a period of between one to more than two years. Average surface temperatures would become colder than those experienced 18,000 years ago at the height of the last Ice Age, and the prolonged cold would cause average rainfall to decrease by up to 90%. Growing seasons would be completely eliminated for more than a decade; it would be too cold and dark to grow food crops, which would doom the majority of the human population.

## Inflation Advantage

### Inflation Low---2NC

#### It’s low enough

Vivien Lou Chen 21, Markets Reporter for MarketWatch, “Still-High U.S. Inflation Leaves Federal Reserve With Little Room for Error”, MarketWatch, 8/11/2021, https://www.marketwatch.com/story/still-high-u-s-inflation-leaves-federal-reserve-with-little-room-for-error-11628703912

U.S. inflation is showing signs of moderating, but not by enough to decisively settle the debate on whether the recent pace of price rises is transitory or not.

The July consumer price index report, which showed the headline annual rate remaining at a 20-year high of 5.4%, leaves the Federal Reserve in a still-precarious bind. Should future inflation readings surprise to the upside or stay elevated in coming months and into 2022, the risk is that consumer expectations for higher prices will become more deeply embedded and harder to reverse, investors and analysts say.

And for now, the central bank is not in a position to do much about that risk other than talk about it, given its two best options for taking action aren’t in the cards for a while. For now, the Fed is focused on whether, when, and by how much to pare back on its $120 billion in monthly bond purchases first. So it could easily take at least a year before the central bank delivers its first interest rate increase — which typically takes another six to nine months to impact the economy. Meanwhile, policy makers’ other option besides a rate hike — shrinking the Fed’s $8.2 trillion balance sheet — isn’t currently on the radar.

#### Inflation is under control

Simon Kennedy 21, Executive Editor for Economics at Bloomberg News, Degree in Economics and Journalism from the City University of London and Concordia University, “The Global Economy Is Shrugging Off the Delta Variant, For Now”, Bloomberg News, 8/11/2021, https://www.bloomberg.com/graphics/global-economic-recovery-q3-nowcast/

As for inflation, some worry its rebound from the recession will prove long-lasting, limiting the scope for central bankers to maintain stimulus and distracting them from their focus on healing labor markets and the broader economy.

But the Bloomberg Economics nowcast models suggest some room for confidence:

- In the U.S., summer readings for the consumer price index pushed past 5% year on year — way outside the Federal Reserve’s comfort zone. The nowcast suggests pressures are set to peak and begin edging down in the third quarter.

- The euro-area — further behind in the recovery but with the pace of growth still accelerating — is expected to see inflation picking up, but not to such elevated levels as those seen in the U.S.

- In Japan, price gains in the third quarter are expected to flatline at 0.1% — a reminder that after temporary frictions from reopening have dissipated, the more serious problem for the world’s central bankers may still be not too much inflation but too little.

Chart, line chart

Description automatically generated

For the world’s biggest central banks, a recovery on track and inflation risks passing means they will be in no hurry to make major moves.

Even as interest rates stay on hold, though, officials are starting to shift other pillars of economic support.

### Renewables---2NC

#### 2---Renewable growth is accelerating

Marlene Motyka 21, US and Global Renewable Energy leader and a principal in Deloitte Transactions and Business Analytics LLP, Master of Business Administration in Finance from Rutgers University and Bachelor of Science in Mechanical Engineering from Lehigh University, https://www2.deloitte.com/us/en/pages/energy-and-resources/articles/renewable-energy-outlook.html

In 2020 states, cities, utilities, and businesses continued to announce or pursue decarbonization plans, despite the onset of a global pandemic and an economic recession. Even without a direct incentive for green infrastructure development in the economic stimulus measures passed in response to COVID-19, clean energy demand in the United States proved resilient as renewables and storage recorded declining costs and rising capacity and usage factors. What’s more, renewables edged out other electricity generation sources when electric demand fell this year. As of early December, the share of renewables had exceeded that of coal in generation for 153 days compared with 39 days in 2019. According to the US Energy Information Administration (EIA), electricity consumption will likely fall by 3.9% year over year in 2020 and increase 1.3% in 2021.

Renewable growth may accelerate in 2021 as the new administration starts to execute on a platform that includes rejoining the Paris Climate Accord, investing $2 trillion in clean energy, and fully decarbonizing the power sector by 2035 in order to achieve a larger goal of net-zero carbon emissions by 2050. A new administration is expected to wield its executive authority to facilitate the deployment of renewables. This may include powers over emissions, public lands, procurement, foreign relations, trade, and agency appointments.

For an industry that has focused heavily on solar and wind, supportive federal actions could help progress timelines for further expansion into new technologies, including advanced batteries and other forms of storage, offshore wind, and green hydrogen technology. As these new technologies, especially green hydrogen production and storage, move toward commercialization, we may see more power-to-x projects to store, convert, and reconvert surplus solar and wind power into carbon-neutral fuels and chemicals.

The potential for increasing renewable energy demand, as well as the electrification of the transportation and industrial sectors and oil and gas companies’ plans to increase participation in the electricity value chain, are accelerating energy industry convergence. These trends may foster collaboration that gives rise to new business models and helps advance the energy transition.

#### 3---But they fail to solve any impacts

Robert Lyman 16, an energy economist and former public servant in Canada with 27 years experience in the field and a decade of experience as a diplomat, "WHY RENEWABLE ENERGY CANNOT REPLACE FOSSIL FUELS BY 2050", Friends of Science, May 2016, www.friendsofscience.org/assets/documents/Renewable-energy-cannot-replace-FF\_Lyman.pdf

A number of environmental groups in Canada and other countries have recently endorsed the “100% Clean and Renewable Wind, Water and Sunlight (WWS)” vision articulated in reports written by Mark Jacobson, Mark Delucci and others. This vision seeks to eliminate the use of all fossil fuels (coal, oil and natural gas) in the world by 2050. Jacobson, Delucci et. al. have published “all-sector energy roadmaps” in which they purport to show how each of 139 countries could attain the WWS goal. The purpose of this paper is to examine whether the 100% goal is feasible. While a range of renewable energy technologies (e.g. geothermal, hydroelectric, tidal, and wave energy) could play a role in the global transformation, the world foreseen in the WWS vision would be dominated by wind and solar energy. Of 53,535 gigawatts (GW) of new electrical energy generation sources to be built, onshore and offshore wind turbines would supply 19,000 GW (35.4%), solar photovoltaic (PV) plants would supply 17,100 GW (32%) and Concentrated Solar Power plants (CSP) would supply 14,700 GW (27.5%). This would cost $100 trillion, or $3,571 for every household on the planet. Western Europe has extensive experience with investments in renewable energy sources to replace fossil fuels. By the end of 2014, the generating capacity of renewable energy plants there was about 216 GW, 22% of Europe’s capacity, but because of the intermittent nature of renewable energy production, the actual output was only 3.8% of Europe’s requirements. The capital costs of renewable energy plants are almost 30 times as high as those of the natural gas plants that could have been built instead; when operating costs are also taken into account, onshore wind plants are 4.6 times as expensive as gas plants and large-scale PV plants are 14.1 times as expensive as gas plants. Wind and solar energy is not “dispatchable” (i.e. capable of varying production quickly to meet changing demand), which results in serious problems – the need to backup renewables with conventional generation plants to avoid shortfalls in supply, and the frequent need to dump surplus generation on the export market at a loss. The current energy system in the United States, Canada and globally is heavily dependent on fossil fuels – they generally supply over 80% of existing energy needs in developed countries and over 87% in the world as a whole. Currently, wind and solar energy sources constitute only one-third of one per cent of global energy supply. The financial costs of building the 100% renewable energy world are enormous, but the land area needed to accommodate such diffuse sources of energy supply is just as daunting. Accommodating the 46,480 solar PV plants envisioned for the U.S. in the WWS vision would take up 650,720 square miles, almost 20% of the lower 48 states. This is close in size to the combined areas of Texas, California, Arizona, and Nevada. A 1000-megawatt (MV) wind farm would use up to 360 square miles of land to produce the same amount of energy as a 1000-MV nuclear plant. To meet 8% of the U.K.’s energy needs, one would have to build 44,000 offshore wind turbines; these would have an area of 13,000 square miles, which would fill the entire 3000 km coastline of the U.K. with a strip 4 km wide. To replace the 440 MW of U.S. generation expected to be retired over the next 25 years, it would take 29.3 billion solar PV panels and 4.4 million battery modules. The area covered by these panels would be equal to that of the state of New Jersey. To produce this many panels, it would take 929 years, assuming they could be built at the pace of one per second. The WWS roadmap for the U.S. calls for 3,637 CSP plants to be built. It would be extremely difficult to find that many sites suitable for a CSP plant. Packed together, they would fill an area of 8,439 square miles, about the area of Metropolitan New York. They would require the manufacture of 63,647,500 mirrors; if they could be manufactured one every ten seconds, it would take 21 years to build that many mirrors. A central component of the WWS vision is the electrification of all transportation uses. This is technically impossible right now, as the technologies have not yet been developed that would allow battery storage applicable to heavy-duty trucks, marine vessels and aircraft. Even in the case of automobiles, despite taxpayer subsidies of $7,500 per vehicle and up, the number of all-electric vehicles sold has consistently fallen far short of governments’ goals. The costs of electrifying passenger rail systems are so high that no private railway would ever take them on. Electrification of a freight railway system makes even less sense, and would cost at least $1 trillion each. The diversion of crops to make biofuels already is raising the cost of food for the world’s poor. The World Resources Institute estimates that if this practice is expanded, it will significantly worsen the world’s ability to meet the calorie requirements of the world’s population by 2050. Scientists and governments have been guilty of the “Apollo Fallacy”; i.e. of thinking that the space race is a model for the development of renewable energy. The Apollo program cost billions of dollars to demonstrate U.S. engineering prowess during the Cold War; costs, and commercial considerations, were secondary considerations, if they counted at all. The proponents of WWS grossly under-estimate the costs of integrating renewable energy sources into the electricity system. The additional costs of backup generation, storage, load balancing and transmission would be enormous. The WWS scenario calls for 39,263 5-MW wind installations in Canada at a cost of $273 billion for the onshore wind generation alone. Building a national backbone of 735 kV transmission lines would cost at least CDN $104 billion and take 20 years to complete. The WWS includes a call to shut down all coal, oil and natural gas production. It implies the closing of all emissions intensive industries, such as mining, petrochemicals, refining, cement, and auto and parts manufacturing. The political and regional backlash against such policies in a country like Canada would threaten Confederation. In short, the WWS vision is based on an unrealistic assessment of the market readiness of a wide range of key technologies. Attaining the vision is not feasible today in technological, economic or political terms.

# 1NR

## DOJ Advantage

### War---Offense---2NC

#### This is true in all scenarios, including against other democracies

Dr. Daina Chiba 21, Associate Professor of Political Science in the Department of Government and Public Administration at the University of Macau, Ph.D. in Political Science from Rice University, LL.M in Jurisprudence and International Relations from Hitotsubashi University, and Dr. Erik Gartzke, Professor of Political Science at the University of California, San Diego, PhD in Political Science from the University of Iowa, “Make Two Democracies and Call Me in the Morning: Endogenous Regime Type and the Democratic Peace”, 2/19/2021, https://dainachiba.github.io/research/make2dem/Make2Dem.pdf

We now turn to the results from the outcome stage, where militarized conflict initiation is regressed on democracy measures and other covariates. The univariate clog-log model 32 that ignores the endogeneity, shown in column (1) in Table 1, successfully replicates the standard, dyadic democratic peace finding that democracies are peaceful, though only toward other democracies. Note that, while individual democracy measures have either a positive or insignificant coefficient, joint democracy has a negative coefficient that overwhelms the positive coefficients of individual democracy measures in the univariate model. As a result, the univariate model produces a result that, while democracy may increase conflict against a non-democracy, it decreases conflict against a democracy.

To illustrate this, we calculate the average treatment effect of joint democracy for the challenger and for the target based on the univariate model. These effects are calculated by comparing the predicted probabilities of conflict initiation when changing the regime type of self (challenger or target) from non-democracy to democracy, holding constant the regime type of the other (target or challenger) as democracy. 33 Gray, hollow circles in Figure 4 show the treatment effects of challenger’s and target’s democracy. We can see that both effects are negative and statistically significant at the 95% confidence level.

Once we correct the endogeneity, however, the data no longer support such conclusions. In column (2) in Table 1, the negative coefficient for joint democracy no longer overwhelms the positive coefficient of challenger’s democracy. Challenger’s democracy now appears to increase conflict even against a democratic target. Red, solid circles in Figure 4 show the average treatment effects of challenger’s and target’s democracy, calculated from the trivariate model. The effect is positive and statistically significant for challenger’s democracy, although the effect is indistinguishable from zero for target’s democracy.

Whether we correct for endogeneity thus makes a significant difference in our estimates of the effect of joint democracy on conflict. The key to understanding why these changes occur lies in the estimated correlations between the error terms for different equations. The estimated error correlation between equations for conflict and challenger’s democracy, 12, is negative and statistically significant. This suggests that unobservable or unmeasured determinants of a country’s democracy make it less likely for that country to attack another country. A failure to control for such factors would generate a negative omitted variable bias, making it look as if challenger’s democracy has a pacifying effect on conflict behavior. On the other hand, the estimated error correlation between conflict and target’s democracy equations, 13, is indistinguishable from zero, suggesting that the endogeneity problem does not seem to operate for target’s regime type.

### War---Defense---2NC

#### Either causality is the other way (peace causes democracy) or the correlation is spurious (democracy and peace both exist because of some third variable that is unknown)

Dr. Daina Chiba 21, Associate Professor of Political Science in the Department of Government and Public Administration at the University of Macau, Ph.D in Political Science from Rice University, LL.M in Jurisprudence and International Relations from Hitotsubashi University, and Dr. Erik Gartzke, Professor of Political Science at the University of California, San Diego, PhD in Political Science from the University of Iowa, “Make Two Democracies and Call Me in the Morning: Endogenous Regime Type and the Democratic Peace”, 2/19/2021, https://dainachiba.github.io/research/make2dem/Make2Dem.pdf

Conclusions

We proposed an approach to estimate the causal effect of joint democracy on violent conflict between countries. Our empirical results suggest that democracy does not have a pacifying effect — on the contrary, democratic countries tend to attack other countries more than non-democratic ones do. These findings not only have important policy implications for foreign policy decision making but also contribute to ongoing scholarly efforts to understand, explain, and predict state behavior in world politics. The modern study of the democratic peace started with an empirical observation that democracy and peace are correlated, which was then followed by theoretical efforts to make sense of the observed pattern. Our findings contradict the initial empirical observation and thus bring into question many of the theories that have been proposed to explain the democratic peace.

If democracy is not the driving factor, we naturally wonder, what explains the observed peace between democracies? While our findings suggest that it is not the first-cluster (democracy-as-cause) argument, they do not reveal which variants of the second-cluster (reverse causality) or third-cluster (spurious correlation) argument are valid. Nevertheless, we offer an additional criterion to choose among multiple possible explanations. Any theory of liberal peace must be able to explain not only the observed peace between democracies but also why democratic challengers are more conflict-prone than non-democratic challengers, even against a democratic target. A promising avenue for future research would be to theorize about these (apparently contradictory) empirical patterns.

### Disease---Impact---2NC

#### It’s the most probable existential threat

Thomas Such 21, Writer for the Glasgow Guardian, “How to Wipe Out Humanity”, The Glasgow Guardian, 2/9/2021, https://glasgowguardian.co.uk/2021/02/09/how-to-wipe-out-humanity/

Not only is a virus the key to an unpredictable disease which may one day wipe out humanity, but the origins of said virus are key. My “research” concluded that the most efficient way of killing humanity is to have the disease spread in a semi-developed country such as China; it is far easier for viruses and other diseases to spread in less developed countries - but in order to successfully achieve global transmission, a host country must have the substantial international infrastructure to spread a pandemic worldwide. Using this strategy in my “research”, I was able to play a game of Plague Inc. wherein the spread and threat of Covid-19 seemed minimal by using China as a perfect starting point to wipe out humanity. The key, as it turns out, is the spreading of the virus - something that Covid-19 has proved can be done very easily in our modern globalised society. The journey from China to Italy spreading the plague across Europe took almost 40 years back in the middle ages: in 2020, it took a mere 40 days for widespread outbreaks to begin in Italy spreading across much of Europe.

My research into the historical spread of pandemics and my attempts to create my destroyer of humanity illustrates a significant disparity between what happens in the real world and the measures one may find in a simulator. Political realities and measures many may consider “draconian” or simply unrealistic heavily impact how a pandemic may spread and the eventual impact it will have on humanity. Using Plague Inc., I was able to effectively kill off humanity in around a year using a fast transmission of virus, which also became gradually more lethal. This is essential to ensure the near-universal transmission of the virus, and to penetrate measures such as increased border security and isolated regions once the knowledge of the pandemic spreads. Whilst it is unlikely that humanity will be wiped out any time soon, it became clear to me that instead of nuclear war, alien invasion or the looming threat of global warming; the real threat to humanity and the eventual destruction of our species may come from something as simple as bacteria. While we like to revel in our scientific advancements of the modern era and the ascension of humans as Earth’s alpha species, it becomes clear that, when we adapt, our environment and the threats it poses adapt with us. Plague Inc. showed a clear pathway to killing off humanity - though, luckily, the Covid-19 threat in the program was combated due to immense political pressure, restrictions and record-making vaccine paces. The real threat, however, remains clear: if humanity becomes increasingly lax with preventive and managerial measures, it is obvious what the future may hold for us.

### Disease---Link---2NC

#### Lockdowns must be absolutely brutal---that’s only possible without democracy

Dr. Fabienne Peter 21, Professor of Philosophy at the University of Warwick, PhD from the University of St. Gallen, “Can Authoritarianism Ever Be Justified?”, The New Statesman, 8/27/2021, https://www.newstatesman.com/ideas/agora/2021/08/can-authoritarianism-ever-be-justified

But is a democratic government always best placed to work for the people, or does working for the people sometimes favour bypassing democratic control? That’s a puzzle worth addressing in the context of the Covid-19 pandemic, and there are reasons to think that the picture is more complicated than the service objection to authoritarianism suggests.

At the start of the pandemic, governments around the world came under pressure to “follow the science” and to introduce highly coercive measures in order to protect their citizens from the disease. Most implemented the recommendations with some form of lockdown, some (such as New Zealand) more rapidly than others (such as the UK). Governments that were more prepared to defer to scientific advice appear to have done better than those that did not.

In terms of containing the spread of the disease in the country, China’s response was one of the most successful in the world. Once the outbreak of a novel coronavirus was established, the Chinese authorities drew on their medical and political expertise to devise and implement strategies to restrict the disease. A combination of top-down decision-making mechanisms and the institutional power to ruthlessly enforce those decisions led to a set of policies – including a strict lockdown of the epicentre city Wuhan and separation of families in quarantine centres – that have been described as “brutal but effective”. As a result, China managed to avoid the high numbers of deaths and the long, drawn-out restrictions seen in countries such as the UK.

The Covid-19 case thus shows that, contrary to what the service objection suggests, authoritarian regimes can work for the people. Why is that? An important part of the explanation is that democracy isn’t always needed to identify the best way forward. Good government sometimes stems from deference to non-democratic authority – in this case, the authority of scientists with expertise on how to manage a pandemic. What justified lockdown at the beginning of the pandemic was, above all, that it was the right decision at the time, not any democratic pedigree. Any government willing to implement the decisions needed to protect its population – as long as it also has the means to implement them effectively – can succeed.

#### Speed of response is key---only authoritarianism’s overcomes public and bureaucratic obstacles

Jonathan Schwartz 12, Professor in the Department of Political Science and International Relations at the State University of New York at New Paltz, PhD and MA in Political Science from the University of Toronto, BA in International Relations and East Asian Studies from the Hebrew University of Jerusalem, “Compensating for the ‘Authoritarian Advantage’ in Crisis Response: A Comparative Case Study of SARS Pandemic Responses in China and Taiwan”, Journal of Chinese Political Science, Volume 17, Number 3, Fall 2012, Springer

However, this approach cannot be followed in the case of novel crises. Novel crises are crises where there is little past experience to draw on. Such crises include massive events such as hurricane Katrina, the 2011 Japan earthquake and tsunami or the 9/11 attacks on the United States that explode on the scene, or more insidious crises such as the spread of a previously unknown infectious disease that only slowly makes itself evident. Of the two types of novel crises the insidious type is often far more dangerous. The danger lies in the likelihood that the leadership will fail to recognize the insidious crisis as a crisis because it develops only slowly and seems amenable to existing response strategies. As a result, the leadership may become aware of the crisis only after it has become widespread or more threatening [2]. SARS is an example of insidious crises. It at first went unrecognized and only slowly did the leadership come to realize the immensity of the threat it represented.

Both forms of novel crises require flexible leadership and response capabilities. The leadership must quickly identify the challenge, engage relevant bureaucracies, implement a response, communicate the nature of the crisis and response effectively and clearly to the public, and control the message as it is being broadcast by the media to the public. These already extremely challenging tasks must be accomplished in a compressed timeframe under highly stressful conditions. Not surprisingly, governments often fail.

Some authors argue that an already challenging situation for leaders is made even more so if they are functioning in a democratic system. In democracies, major emergencies require involvement by multiple jurisdictions and many levels of representative government. Coordinating among these often overlapping and contentious jurisdictions can be difficult. Politicians must identify and justify priorities and actions to local leaders, the public and the mass media.

These same authors suggest that the challenges are less significant in authoritarian regimes. Authoritarian leaders enjoy an ‘authoritarian advantage’, being less likely to need to negotiate with bureaucracies over jurisdictional powers or struggle to disentangle overlapping institutions. Furthermore, the media and by extension the message to the public are more easily controlled.

### Nigeria---Impact---2NC

#### It spills into the Middle East and South Asia---nuclear war

Walter Mead 13, James Clarke Chace Professor of Foreign Affairs and Humanities at Bard College, “Peace in The Congo? Why the World Should Care”, The American Interest, 12/15/2013, <https://www.the-american-interest.com/2013/12/15/peace-in-the-congo-why-the-world-should-care/>

The problem is that these wars spread. They may start in places that we don’t care much about (most Americans didn’t give a rat’s patootie about whether Germany controlled the Sudetenland in 1938 or Danzig in 1939) but they tend to spread to places that we do care very much about. This can be because a revisionist great power like Germany in 1938-39 needs to overturn the balance of power in Europe to achieve its goals, or it can be because instability in a very remote place triggers problems in places that we care about very much. Out of Afghanistan in 2001 came both 9/11 and the waves of insurgency and instability that threaten to rip nuclear-armed Pakistan apart or with trigger wider conflict India. Out of the mess in Syria a witches’ brew of terrorism and religious conflict looks set to complicate the security of our allies in Europe and the Middle East and even the security of the oil supply on which the world economy so profoundly depends.

Africa, and the potential for upheaval there, is of more importance to American security than many people may understand. The line between Africa and the Middle East is a soft one. The weak states that straddle the southern approaches of the Sahara are ideal petri dishes for Al Qaeda type groups to form and attract local support. There are networks of funding and religious contact that give groups in these countries potential access to funds, fighters, training and weapons from the Middle East. A war in the eastern Congo might not directly trigger these other conflicts, but it helps to create the swirling underworld of arms trading, money transfers, illegal commerce and the rise of a generation of young men who become experienced fighters—and know no other way to make a living. It destabilizes the environment for neighboring states (like Uganda and Kenya) that play much more direct role in potential crises of greater concern to us.

### Nigeria---Impact---2NC---Turns Economy

#### It crashes the global economy

Stephanie Hanson 10, Associate Director and Coordinating Editor at the Council on Foreign Relations, “Combatting Marine Piracy”, Council on Foreign Relations, 1/7/2010, <http://www.cfr.org/france/combating-maritime-piracy/p18376>

In 2009, maritime piracy reached its highest level since the IMB's Piracy Reporting Center began tracking piracy incidents in 1992, surpassing levels from 2008, which was the previous record year. Of the forty-nine successful hijackings in 2008, forty-two occurred off the coast of Somalia, including the capture of an oil supertanker, the Sirius Star. In 2009, that number rose to forty-seven, despite reduced global shipping and a multi-country naval military force aimed at stemming piracy in the region. Overall attacks off the coast of Somalia represented about half of all maritime piracy globally according to the IMB. Though Somalia gets the lion's share of attention on global piracy, the IMB says incidents off the coast of Nigeria, which largely involve robberies rather than hijackings, were more likely to include violence against the crew than anywhere else in the world in 2009. In other areas of the world, including Indonesia, piracy dropped.

The shipping industry has urged greater action on the part of the world's navies. But many ships are not even using basic deterrents.

There is no quantitative research available on the total cost of global piracy. Estimates vary widely because of disagreement over whether insurance premiums, freight rates, and the cost of reroutings should be included with, for instance, the cost of ransoms. Some analysts suggest the cost is close to $1 billion a year, while others claim losses could range as high as $16 billion. Some experts such as Martin N. Murphy, author of a 2007 study on piracy and terrorism, warn against exaggerating the threat posed by maritime pirates. He notes that even $16 billion in losses is a small sum in comparison to annual global maritime commerce, which is in the trillions of dollars.

Analysts generally express greater concern about the potential geopolitical repercussions of hijackings at sea. As journalist John S. Burnett writes in his 2002 book Dangerous Waters: Modern Piracy and Terror on the High Seas, maritime experts worry that "one attack on the wrong ship at the wrong time" could result in "the closure of one of the strategic international waterways upon which so much of the world economy depends." For instance, 60 percent of the world's crude oil moves by ship, yet oil companies spend more money protecting their petrol stations than their supertankers.

### U---2NC

#### Nigeria’s imploding and will spill over to wreck overall African stability---authoritarianism’s key

Dr. Sa’eed Husaini 21, PhD in International Development from the University of Oxford, MSc in African Studies from the University of Oxford, BA in Political Science and International Studies from Hope College, Former Consultant at the Natural Resource Governance Institute, Former Research Analyst at Freedom of the Press Africa, Former Analyst at Control Risks, “Nigeria Is in Disarray. So Its President Banned Twitter.”, New York Times, 6/8/2021, https://www.nytimes.com/2021/06/08/opinion/nigeria-buhari-crisis-twitter.html

On all sides, Nigeria is buffeted by crisis.

A series of mass abductions — most recently on May 30, when 136 schoolchildren were carried off by gunmen — have swept the country’s north-central and northwest regions: Since December, more than 800 students have been kidnapped. States in the southeast and southwest, meanwhile, have witnessed the rise of separatist militias, as conflicts between farmers and pastoralists have grown ever more deadly. And Boko Haram and its rival factions continue to terrorize the country’s northeast.

Each of these issues is longstanding, with roots going back years if not decades. But they have come together to create a gathering sense of crisis — for which President Muhammadu Buhari, who came to power in 2015 on the promise to restore the country’s security, has been roundly blamed. On social media, posts lambasting the president are rife. Civil society groups and prominent public figures have called on Mr. Buhari to resign. Others have gone even further, calling for a handover of power to the military.

But such critics are likely to be disappointed. Despite the spiraling security crisis, Mr. Buhari has been largely insulated from political backlash. His influence within the ruling All Progressives Congress party, which dominates both houses of Nigeria’s parliament and most state governorships, remains steady. And for those who covet his nomination in next year’s presidential election primaries, he is beyond rebuke. There is no serious challenge to his rule.

For the country — bearing the legacies of civil war, communal violence and military dictatorship — that could be calamitous. In the absence of a viable political alternative, the violent division in Nigeria could spill over into disaster, with damaging consequences for both the region and the African continent.

### Nigeria---Link---2NC

#### Spending on elections diverts from public services and locks in wealth inequality

Dr. Aloysius-Michaels Okolie 21, Professor in the Department of Political Science at the University of Nigeria, PhD in Political Science and MSc from the University of Nigeria, et al., “Does Liberal Democracy Promote Economic Development? Interrogating Electoral Cost and Development Trade-Off in Nigeria’s Fourth Republic”, Cogent Social Sciences, Volume 7, Issue 1, 4/28/2021, Taylor & Francis Online

PUBLIC INTEREST STATEMENT

The debate on the suitability of liberal democracy in supporting economic development in post-colonial African states has unabatedly continued to remain at the centre of current intellectual discourses and conversations. Although scholars seem to be focused on the endogenous constraints to the capacity of liberal democracy in generating the expected development outcome, specific attention is yet to be paid on how exorbitant spending on elections undermines human development in Nigeria. This study therefore argues that the electoral timetable of a 4-year tenure system renewable only once, which sustains exorbitant public expenditure on elections is antithetical to the human development drive of the Nigerian state. It diverts public spending, incapacitates the state from addressing the economic priority needs of the people, and deepens the gap between the rich and poor. Redesigning and retuning the content of liberal democracy in line with the demands, peculiarities and realities of the Nigerian state are highly recommended in the study.

#### That creates a time bomb that’ll inevitably implode stability---abandoning democracy’s key

Moses E. Ochonu 19, Cornelius Vanderbilt Chair in History and Professor of African History at Vanderbilt University, PhD and MA in African History from the University of Michigan, BA in History from Bayero University, Graduate Certificate in Conflict Management from Liscomb University, “Why Liberal Democracy is a Threat to Nigeria’s Stability”, Logos: A Journal of Modern Society & Culture, May 2019, <http://logosjournal.com/2019/liberal-democracy-is-a-threat-to-nigerias-stability/> [language modified]

The Real Cost of Democracy

Aside from the aforementioned financial cost of elections and patronage, other expenditures bring the recurring cost of the Nigeria’s 20-year democratic project into tens of billions of dollars, an expense that will sooner or later ~~cripple~~ [ruin] the country financially. Let me expatiate. A recent report confirmed what many Nigerians have long suspected about the remunerations of their elected executive and legislative leaders: Nigerian elected public office holders at all levels of government are the highest paid in the world.[5] Together with their string of assistants and advisors (who sometimes have their own paid advisors), Nigeria’s public officers gobble up at least half of the nation’s revenue and budgetary appropriations in legitimate rewards.

This prohibitive democratic overhead has left the country with a smaller pool of funds than ever to invest in the things that matter to Nigerians: roads, healthcare, schools, water, electricity, and food production. This odd reality of low returns on democratic investment is unsustainable. Something has to give.

What is being eroded is the very stability of the state, along with any trust that citizens still have in it. This is a proverbial ticking time bomb that will implode or explode if the trend continues, if this democracy endures. Twenty years since the return of civilian rule, it is not an exaggeration to say that not only has democracy not paid off for Nigeria but that it is now a threat to its stability and survival. This is a radical shift that has occurred stealthily and has thus been missed by the Western governmental and non-governmental actors that encouraged and funded democratic advocacy in the 1990s.

### Warming---Link---2NC

#### 3. VALUES---freedom to pollute and rights to consume guarantee overshoot

Dr. Chien-Yi Lu 21, PhD and MA in Government from the University of Texas, Austin, Visiting Scholar at Harvard University, Associate Research Fellow at the Institute of European and American Studies of Academia Sinica, Surviving Democracy: Mitigating Climate Change in a Neoliberalized World, Paperback Edition, 12/13/2021, p. 3-4

This pessimism stems from the unavoidable transition of capitalism from its expanding form to a stationary one under severe scarcity of resources, as “whether we are unable to sustain growth or unable to tolerate it…,it seems beyond dispute that the present orientation of society must change” (1980: 110, original emphasis). Social tensions will inevitably rise when scarcity-propelled stationary or even slow-growing capitalism renders infeasible the usual method of appeasing the lower and middle classes by further deepening the grab into the nature to improve their economic positions, leaving the diminishing of the incomes of the upper echelons of society the only option (1980: 102). Given the widespread belief that “centralized authority will cope with crisis and unrest more ‘successfully’ than less authoritarian structures” and the historic pattern in democracies where “the pressure of political movement in times of war, civil commotion, or general anxiety pushes *in the direction of authority*, not away from it,” (1980: 128–9, original emphasis) Heilbroner concluded that intolerable socioeconomic strains will eventually exceed the capabilities of representative democracy, leading governments of these societies to resort to authoritarian measures (1980: 106).

Similarly, Ophuls contended that under conditions of ecological scarcity, if individuals are allowed to pursue their self-interest “unrestrained by a common authority,” the result is bound to be “common environmental ruin” (1977: 151). Accordingly:

the individualistic basis of society, the concept of inalienable rights, the purely self-defined pursuit of happiness, liberty as maximum freedom of action, and laissez faire itself all become problematic, requiring major modification or perhaps even abandonment if we wish to avert inexorable environmental degradation and eventual extinction as a civilization. (1977: 152)

To him, the only solution is “a sufficient measure of coercion;” and “democracy as we know it cannot conceivably survive” (1977: 151–2).

In the same vein, Ophuls and Boyan (1992) talked about the crucial role that “ecological mandarins” must play under resource scarcity. Concurring with Robert Dahl’spoint that “a reasonable man will want the most competent people to have authority over the matters on which they are most competent” (Dahl, 1970: 58), Ophuls and Boyan emphasized that “under certain circumstances democracy *must* give way to elite rule,” and “the more closely one’s situation resembles a perilous sea voyage, the stronger the rationale for placing power and authority in the hands of the few who know how to run the ship” (Ophuls and Boyan, 1992: 209, original emphasis). Given that ecology is esoteric and that only those with talents and training are qualified as specialists, “a class of ecological mandarins who possess the esoteric knowledge” is required to run the “ecologically complex steady-state society” well. Such a society

will not only be ostensibly more authoritarian and less democratic than the industrial societies of today (the necessity of coping with the tragedy of the commons would alone ensure that), but it may also be more oligarchic as well, with full participation in the political process restricted to those who possess the ecological and other competencies necessary to make prudent decisions. (1992: 215)