# 1nc – round 6

## offcase

**1nc – t-prohibit**

#### Prohibitions must forbid --- Governing standards are distinct

Chanell 90 --- William Chanell, Associate Justice, California Court of Appeals, “CITY OF REDWOOD CITY v. DALTON CONSTRUCTION COMPANY”, Dec 1990, https://caselaw.findlaw.com/ca-court-of-appeal/1769184.html

We agree with the trial court's conclusion. By its plain language, section 35704 exempts certain contractors from the application of an ordinance [221 Cal. App. 3d 1573] adopted pursuant to section 35701. Section 35701 permits cities to prohibit the use of city streets by heavy trucks. (See § 35701, subd. (a).) However, the portion of the city's hauling ordinance at issue in this case does not prohibit street use; it regulates users by requiring them to obtain a permit and pay a fee in order to lawfully drive their heavy trucks over city streets. (See Redwood City Code, §§ 20.62-20.74.) To determine the legislative intent behind a statute, courts look first to the words of the statute themselves. In so doing, we must give effect to the statute according to the usual, ordinary import of its language. (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal. 3d 222, 230 [110 Cal. Rptr. 144, 514 P.2d 1224].) To construe section 35704, which specifically creates an exemption from prohibition of use, to exempt the regulation of that use would violate these cardinal rules of statutory construction. [2] The distinction between a regulation and a prohibition is well understood in municipal law. (See San Diego T. Assn. v. East San Diego (1921) 186 Cal. 252, 254 [200 P. 393, 17 A.L.R. 513].) The term "prohibit" means "[t]o forbid by law; to prevent;-not synonymous with 'regulate.' " (Black's Law Dict. (5th ed. 1979) p. 1091, col. 1.) The term "regulate" means "to adjust by rule, method, or established mode; to direct by rule or restriction; to subject something to governing principles of law. It does not include a power to suppress or prohibit [citation]." (In re McCoy (1909) 10 Cal. App. 116, 137 [101 P. 419].) [1b] Therefore, we are satisfied that section 35704 was not intended to apply to ordinances regulating street use, but only to those prohibiting such use.

**Only per se rules bans a PRACTICE --- rule of reason regulate anticompetitive effects for individual acts**

**Stucke 09** --- Maurice E. Stucke, Associate Professor, University of Tennessee College of Law, “Does the Rule of Reason Violate the Rule of Law?”, University of California, Davis [Vol. 42:1375 2009], https://lawreview.law.ucdavis.edu/issues/42/5/articles/42-5\_Stucke.pdf

But who has created this predicament? The Supreme Court. Over the past ninety years, the Court has supplied the Sherman Antitrust Act’s legal standards. In determining the legality of restraints of trade, the Supreme Court generally employs either a per se or rule-of-reason standard.10 Under the Court’s per se illegal rule, certain restraints of trade are deemed illegal without consideration of any defenses. These restraints are so likely to harm competition and to lack significant procompetitive benefits that, in the Court’s estimation, “they do not warrant the time and expense required for particularized inquiry into their effects.”11 Under the per se rule, once a plaintiff proves an agreement among competitors to engage in the prohibited conduct, the plaintiff wins.12 But the Court evaluates all other restraints under the rule of reason. This standard involves a **flexible** factual **inquiry** into a restraint’s overall competitive effect and “the facts **peculiar to the business**, the history of the restraint, and the reasons why it was imposed.”13 The rule of reason also “**varies in focus and detail** depending on the nature of the agreement and market circumstances.”14 “Under this rule the fact finder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.”15 Despite its label, the rule of reason is not a **directive defined ex ante (such as a speeding limit).**16 Instead, the term embraces antitrust’s most **vague and open-ended principles**, making prospective compliance with its requirements exceedingly difficult.

**Vote neg for GROUND and LIMITS --- Other standards dodge topic uniqueness and links and they can pick something that’s broader but more permissive --- creating a bidirectional topic. Standard prolif makes the topic unmanageable**

### 1nc – ptx

#### Biden’s PC is likely to pass climate spending this week – BUT sustaining focus and continuing to avoid tough votes for Manchin and Sinema is key

Cadelago et al 10-19 (Christopher Cadelago, White House Correspondent at POLITICO; Marianne LeVine, reporter at POLITICO, and Nicholas Wu, reporter at POLITICO; **internally citing White House aides, Sen. Jon Tester (D-Mont.), Rep. Pramila Jayapal, chair of the Congressional Progressive Caucus, John Podesta, top aide to former Presidents Barack Obama and Bill Clinton, and Louisa Terrell, director of the White House Office of Legislative Affairs**; “Biden bets his agenda on the inside game,” POLITICO, 10-19-2021, <https://www.politico.com/news/2021/10/19/biden-agenda-inside-game-516239>)

Before Joe Biden can fully pitch the public on his solutions to a lingering pandemic and economic rockiness, he’s got to finish the sale to his own party’s lawmakers. As Democrats on Capitol Hill brace in anticipation of a brutal midterm, Biden is spending an extraordinary amount of time and political capital behind the scenes to convince them to rally around a common framework for social and climate spending. His congressional huddles have accelerated, from phone calls on the White House veranda to one-on-one and group meetings — including two high-stakes Tuesday sit downs with moderates and progressives. He’s dialing up old friends to take their temperature about how his presidency is really fairing far beyond the Beltway. White House aides, in their own recent conversations with nervous allies, have repeatedly cited the flurry of presidential calls as a sign itself of Biden's commitment to getting the bills over the finish line, at times bristling at claims that he hasn't been involved enough. But Biden’s hours and hours of meetings don’t just reflect the precarious moment in which his presidency finds itself. They underscore the heavy reliance his White House has placed on an inside game, rather than the bully pulpit, to dislodge recalcitrant holdouts and move their agenda. "The president is a longtime policy guy and relationship guy. So he brings both kinds of skills to his work" to corral his party behind a trillion-dollar-plus package of progressive priorities, said Biden's former primary rival Sen. Elizabeth Warren (D-Mass.). Warren acknowledged, however, that Biden's level of influence over Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — both of whom met with Biden on Tuesday — remains to be seen: "We'll know the answer to that when we make it across the finish line and assess what we’ve got." Biden met Tuesday afternoon with Sens. Jon Tester (D-Mont.), Catherine Cortez Masto (D-Nev.) and Mark Warner (D-Va.), along with House progressives and moderates. "We just need to get to a number," Tester said after returning from the White House. "I think that he likes all the programs but I think everybody's negotiable at this point." Biden told progressives that tuition-free community college would likely be cut from the final package and the child tax credit may only be extended for a single year, according to a source familiar with the meeting. Rep. Pramila Jayapal, chair of the Congressional Progressive Caucus, said after the meeting that tuition-free college is "probably going to be out," and certain climate priorities were "challenging." "At this point we don't have a certainty on the final thing, but what we're hearing is good," Jayapal said. "We feel like the vast majority, if not all, of our priorities are in there, in some way, shape or form.” As Biden has worked on lawmakers in private — sometimes not putting a hard stop on his schedule so as not to stifle progress — he’s largely, though not entirely, resisted riskier public pressure campaigns that could backfire and are viewed as against his nature. Often, Biden has had just a single public event each day. Occasionally, there’s been no public interfacing at all. Eight times since Labor Day, the daily guidance issued by the White House has included only private meetings with Biden. A planned barnstorming of the country to sell the Build Back Better platform this summer was overshadowed by the chaotic U.S. withdrawal from Afghanistan. And congressional uncertainty amid infighting among Democrats on opposite poles of the party has overshadowed continuing trips by Cabinet officials and commandeered the media narrative in Washington. While Biden has held public events around the agenda, he has not done a formal press interview on it since Labor Day. On Wednesday, he will take a trip to his hometown of Scranton, Pa., to discuss the benefits of the legislative proposals, and on Thursday he will participate in a town hall broadcast on CNN. “The President won the most votes in history running on his Build Back Better agenda, unveiled the formal proposal in his first address to a joint session of Congress, and has made his case across the country ever since – along with his cabinet – which is deeply resonating with the American middle class," White House spokesman Andrew Bates said. Over the weekend, Biden called Sen. Bob Casey (D-Pa.) to discuss the upcoming trip, according to the senator, who is working on expanding care for older people and people with disabilities. “He wanted to get some suggestions about issues we should focus on, while we’re there,” Casey said. Still, inside the White House, the lower-key strategy has been seen as a necessity: Democrats have such slim congressional majorities that Biden, Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi have essentially no margin for error. That has put far more of the president’s focus on convincing a relatively small number of lawmakers to agree to details of the package, rather than using his time to sell policies that the general public supports. Chief among that small number of lawmakers are Manchin and Sinema, who remain resistant to the range of $1.9 trillion to $2.2 trillion that Biden and progressive lawmakers have discussed as a compromise top line for the social spending bill. "I'm told that they've given signs on the parking spaces for these two senators at the White House, that they're there so often,” Senate Majority Whip Dick Durbin (D-Ill.) said of Manchin and Sinema. “This president has been engaged from the start, in working with all the leaders, and particularly with those two senators." As he does that, Biden has labored to project a sense of optimism about his progress. White House officials say they’re encouraged by what they described as the accelerated pace of the talks, even as the Oct. 31 timetable appears exceedingly ambitious. Another explanation for the approach was baked in long ago. Biden is a 36-year veteran of the Senate with a heightened sense of his own negotiating instincts and abilities to move major legislation through the chamber. A self-admitted schmoozer, he has avoided doing much to shame Manchin and Sinema, preventing many details from their conversations and about his own preferences from spilling into public view. “There’s a lot of complaining about what the message has been on this package, but when you’re trying to fight for every vote, the coverage inevitably becomes about the process and numbers,” said John Podesta, a top aide to former Presidents Barack Obama and Bill Clinton and a major climate activist. “When you are inside talking one-on-one to members trying to convince people to stay with you or come on board it’s very hard to create a press environment which is different from what they’ve got.” Biden has resumed his in-person meetings with Congress’ return to Washington, including Tuesday sit-downs that involved Vice President Kamala Harris and Treasury Secretary Janet Yellen. There's a deepening acknowledgment that he has to hurry. “They really are now in a circumstance where they will take on more and more water unless they can close the framework,” Podesta added. “I think they’ll do it. But it’s not like they have forever. We’re talking about this week or next week.” In his meetings, Biden has spent a considerable amount of time on the party’s collective sense of urgency, aides and allies said, telling members of his party that they simply have to deliver. The conversations have at times been crisp, with Biden telling some Democratic skeptics that in order to be part of the negotiating process, they need to articulate policies that they are for and not just what they oppose — a message similar to the one Sen. Bernie Sanders (I-Vt.) has delivered to Manchin and Sinema. Biden’s goal has been to help establish broad areas of agreement before filling in the specifics. At the same time, Biden has repeatedly cautioned his senior aides and officials not to rely on generalizations, and to prepare recommendations based on data and input from the lawmakers about their states and districts. He has stolen bits of face time with lawmakers wherever he can, keeping members back after bill signings, for example, to sound them out, and gathering with them in their districts when he’s been on the road. Moving beyond sticking points has been a challenge, and Biden is known to implore lawmakers to step back and ignore a particular area and to temporarily focus on others where they might be able to make progress. “When you see him artfully and deftly manage these hard conversations with members and guide them into a productive place, it helps remind you there is room for optimism and there is a pathway here,” said Louisa Terrell, director of the White House Office of Legislative Affairs.

#### Plan necessarily drains PC – trading off with unrelated agenda items.

Carstensen 21 Peter C. Carstensen - Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, M.A., Yale University; LL.B., Yale Law School; former attorney at the Antitrust Division of the United States Department of Justice, where one of his primary areas of work was on questions of relating competition policy and law to regulated industries. He is a Senior Fellow of the American Antitrust Institute – “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST” – Concurrences – #1 - Feb 15, 2021 - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen

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.

#### Delivering climate spending at Glasgow’s the only way to avoid existential climate change

--NDC = “nationally determined contributions” (to net zero global emissions by 2050) = the “ratchet mechanism” where NDCs should increase each conference

--broadly, yes political will among developed countries, esp. China, already on board net zero

--political will in developing countries is explicitly conditional on Biden’s ability to pass climate finance provisions in the social infrastructure bill

--Biden’s ability to showcase credible policies to achieve an ambitious NDC + financing drives up everyone else’s NDCs sufficient to achieve 1.5 deg track

--1.5 deg key – each incremental increase above that exponentially increases existential risk – IPCC report

--not too late, Glasgow specifically is the last chance – IPCC report

Åberg et al 10-5 (Anna Åberg, research analyst in the Environment and Society Programme of Chatham House, formerly served as desk officer at the Swedish Ministry for Foreign Affairs, MSc Development Studies, London School of Economics and Political Science, BSc Business and Economics, and Politics and Economics, Lund University; Antony Froggatt, deputy director and senior research fellow in the Environment and Society Programme of Chatham House; and Rebecca Peters, Queen Elizabeth II Academy Fellow in the Environment and Society Programme of Chatham House, doctoral candidate at the University of Oxford with the UK Foreign, Commonwealth and Development Office REACH Water Security programme, MSc Development Economics, MSc Water Science and Policy, Marshall Scholar; “Raising climate ambition at COP26,” Chatham House (the Royal Institute of International Affairs, London) Research Paper, October 2021, https://www.chathamhouse.org/sites/default/files/2021-10/2021-10-05-raising-climate-ambition-at-cop26-aberg-et-al-pdf.pdf)

01

Introduction COP26 is the most important climate summit since COP21 in Paris in 2015. Over the past year, the global politics of climate change have shifted, with the election of President Joe Biden and the announcement of China’s carbon neutrality target. Addressing climate change is the defining challenge of our time. Around the globe – and across the suite of UN organizations – there is widespread recognition of the urgency to reduce greenhouse gas (GHG) emissions and to prepare for a world that is, and will continue to be, severely impacted by climate change. The foundational treaty of the international climate change regime – the United Nations Framework Convention on Climate Change (UNFCCC) – was adopted at the Rio Earth Summit in 1992.1 Its signatories agreed to ‘achieve… stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’.2 The states that have ratified the UNFCCC meet annually at the ‘Conference of the Parties’ (COP) to assess and review the implementation of the convention.3 The COP has negotiated two separate treaties since the formation of the UNFCCC: the Kyoto Protocol in 1997, and the Paris Agreement in 2015.4 The Paris Agreement was adopted by 196 parties at COP21 in 2015 and entered into force less than a year later.5 The goals of the treaty are to keep the rise in the global average temperature to ‘well below 2°C above pre-industrial levels’, ideally 1.5°C; enhance the ability to adapt to climate change and build resilience; and make ‘finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development’.6 The agreement adopts a ‘bottom-up’ and non-standardized approach, where parties themselves set their national emission reduction targets and communicate these to the UNFCCC in the form of nationally determined contributions (NDCs).7 As things stand, the targets8 that were submitted in the run-up to COP21 are not sufficient, even if fully implemented, to limit global warming to 2°C, much less 1.5°C.9 The Paris Agreement was designed, however, to generate increased ambition over time via two components: a collective ‘global stocktake’ during which progress towards Paris Agreement goals is assessed based on country reporting,10 and the ‘ratchet mechanism’, which encourages countries to communicate new or updated NDCs every five years, with the expectation that ambition will increase over time.11 The results of the stocktake are scheduled to be released two years before NDC revisions are made.12 This sequencing is designed to allow national plans to account for the global context of the climate assessment. The first global stocktake is to be conducted between 2021 and 2023, and will be repeated every five years thereafter.13 The results of the first stocktake are due to be published around COP28. We really are out of time. We must act now to prevent further irreversible damage. COP26 this November must mark that turning point.14 UN Secretary-General António Guterres, 16 September 2021 The 26th Session of the Conference of the Parties (COP26) to the UNFCCC is to be hosted by the UK, in partnership with Italy. After a year-long delay, the conference is now scheduled to take place in Glasgow, Scotland, between 31 October and 12 November 2021.15 Organizing an in-person event during a pandemic presents a substantial challenge. The UK government is providing vaccines to accredited delegations, but doses only started to be delivered at the beginning of September 2021 and restrictions, such as quarantine requirements,16 pose further obstacles to participation.17 An alliance of 1,500 civil society organizations are among those calling for a second postponement of the COP, citing concerns about a lack of plans to enable safe and inclusive participation of delegates from, not least, the Global South.18 The UK government is, however, adamant that it will proceed with the conference as planned.19 The pandemic has changed understandings of global risks, the interconnected nature of economies and the role of governments in preparing for and responding to existential threats. This may provide impetus for accelerated climate action. The postponement of COP26 itself has been of considerable significance. Over the past year, the global politics of climate change have shifted, with the election of President Joe Biden and the announcement of China’s climate neutrality target being particularly important. Moreover, the economic recovery packages that are being rolled out to counter the economic consequences of the pandemic present an opportunity to accelerate the green transition.20 To date, however, the members of the G20 have prioritized investments in fossil fuels above those in clean energy,21 and only 10 per cent of the global expenditure is estimated to have been allocated to projects with a net positive effect on the environment.22 COP26 is the most important climate summit since COP21 in Paris, and it differs from earlier COPs in several ways: it is the first test of the ambition-raising ratchet mechanism and marks a shift from negotiation to implementation. An ambitious outcome at COP26 requires substantial action to be taken before the summit – and outside the remits of the UNFCCC process – as well as at the actual conference. Human activity has already caused the global average temperature to rise by around 1.1°C above pre-industrial levels, and every additional increase in warming raises the risks for people, communities and ecosystems. To avoid the most catastrophic climate change impacts, it is essential world leaders make every effort to limit warming to 1.5°C. Working group I of the Sixth Assessment Report of the IPCC shows it is still possible to keep warming to this critical threshold, but that unprecedented action must be taken now.23 As John Kerry, special presidential envoy for climate, stated, ‘[t]his test is now as acute and as existential as any previous one’.24 COP26 has a critical role in getting the world on track for a 1.5°C pathway, and in supporting those most affected by climate change impacts. It also constitutes a key test for the credibility of the Paris Agreement and the UNFCCC process overall. But what can and should the Glasgow summit achieve more specifically? The objective of this paper is to discuss what a positive outcome at COP26 would entail, with the dual aims of encouraging increased ambition and contributing to an informed public debate. The main argument put forth is that substantial progress must be made in three main areas, namely on increasing the ambition of NDCs; enhancing support to and addressing concerns of climate-vulnerable developing countries; and advancing the Paris Rulebook to help operationalize the Paris Agreement. COP26 is undoubtedly hugely significant and national government pledges in the run-up to Glasgow will contribute to shaping the level of future GHG emissions. However, the event is not only critical in terms of reaching an ambitious outcome on climate, it is also an important opportunity to judge the level of confidence in the international process and the UNFCCC. 02 Increasing the ambition of the NDCs A key element of COP26 will be the level of ambition of the revised NDCs put forward by governments to the UNFCCC and the extent to which these keep the 1.5°C global warming target agreed in Paris within reach. According to the United Nations Environment Programme (UNEP), greenhouse gases (GHGs) in 2019 totalled 52.4 gigatonnes of CO₂ equivalent (GtCO₂e)25 of which the majority was CO₂ (38 Gt), then methane (9.8 Gt), nitrous oxide (2.8 Gt) and F-gases (1.7 Gt).26 The same year, GHG emissions were approximately 59 per cent higher than in 1990 and 44 per cent higher than in 2000.The six largest emitters – together accounting for 62 per cent of the global total – were China (26.7 per cent), the US (13 per cent), the EU (8 per cent), India (7 per cent), Russia (5 per cent) and Japan (3 per cent) (see Figure 1).27 **[FIGURE 1 OMITTED]** According to UNEP, the implementation of the first round of NDCs would result in an average global temperature increase of 3°C above pre-industrial levels by the end of the century, with further warming taking place thereafter. If these NDC’s were fully implemented, emission levels are expected to be in the range of 56 GtCO2e (with unconditional NDCs) to 53 GtCO₂e (with conditional NDCs) by 2030.28 To align with a 2°C pathway, the ambition of the second round of NDCs would need to triple relative to the original targets, leading to emissions levels of around 41 GtCO₂e in 2030. Alignment with the 1.5°C target would require a fivefold increase in ambition, leading to emission levels around 25 CO₂e in 2030 (see Figure 2).29 **[FIGURE 2 OMITTED]** The Paris Agreement states that parties shall communicate an NDC every five years,30 and that each submission shall constitute a progression in terms of ambition.31 Parties conveyed their first round of targets prior to COP21, and were due to submit new or updated plans in 2020.32 COP26, originally scheduled for November 2020, would then take stock of the collective level of ambition of these plans vis-à-vis the temperature targets of the Paris Agreement. The postponement of the COP by one year has in practice (albeit not formally) extended the deadline for submitting NDCs to ‘ahead of COP26’. Where do we stand? The delay of COP26 has given countries more time to put forward NDCs and longer-term decarbonization targets. This effort gained significant traction when China pledged to achieve carbon neutrality by 2060 and peak its emissions before 2030, during the general debate of the 75th Session of the UN General Assembly (UNGA) in September 2020.33 Then, in November 2020, the UK submitted its NDC, pledging a 68 per cent reduction in emissions by 2030 (based on 1990 levels)34 and later added a 2035 target of 78 per cent.35 The EU has, moreover, put forward a 55 per cent reduction target relative to 1990 levels,36 with some countries within the bloc going even further, including Germany, which agreed on a 65 per cent reduction target.37 The election of President Biden has fundamentally changed the US’s position on climate change, leading to, among other things, the country re-joining the Paris Agreement.38 At a specially convened Leaders Summit on Climate – hosted by the US – the Biden administration presented an NDC with an emission reduction target of 50–52 per cent39 (based on 2005 levels, which is equivalent to 40–43 per cent below 1990 levels40). During the summit, countries including Canada, Japan and others pledged more ambitious NDC targets.41 While there is more pressure on governments to act on climate change, due to its increasingly devastating impacts, there are also more opportunities for carbon mitigation through available alternative technologies and systems, as well as falling renewable energy costs (see Box 2). Table 1 details the NDC targets put forward by G20 countries prior to COP21 in Paris and the extent to which these have since been revised. The updated NDCs have been assessed by the independent body, Climate Action Tracker, which has analysed to what extent the NDCs align with the 1.5°C pathway. The analysis also looks at domestic policies and actions, which are important as they provide an indication of whether governments are following through on their promises. **[TABLE 1 OMITTED]** As of September 2021, 85 countries and the EU27 had submitted new or updated NDCs, covering around half of global GHG emissions. Some parties, like China and Japan, have proposed new targets but not yet submitted them formally while around 70 parties – including G20 countries like India, Saudi Arabia and Turkey – have neither proposed nor communicated a revised NDC target. Several parties have, moreover, submitted new NDCs without increasing ambition. These include Australia, Brazil, Indonesia, Mexico, New Zealand, Russia, Singapore, Switzerland and Vietnam.42 In some of these cases, adjustments in baselines mean that ambition has de facto decreased (Brazil and Mexico).43 Analysis published by Climate Action Tracker in September 2021 shows that the NDC updates only narrow the gap to 1.5°C by, at best, 15 per cent (4 GtCO₂e). This leaves a large gap of 20–23 GtCO₂e.44 Similar analysis from the UN underscores the need for further NDC enhancements.45 If all current NDCs are implemented, total GHG emissions (not including emissions associated with land use) in 2030 are projected to be 16.3 per cent higher than in 2010, and 5 per cent higher than in 2019. The emissions of the parties that have submitted new or updated NDCs are, however, expected to fall by around 12 per cent by the end of the decade, compared to 2010 levels. The UN report also highlights the importance of providing support to developing countries, as many of these have submitted NDCs that are – at least in part – conditional on the receipt of additional financial resources, capacity-building support, and technology transfer, among other things. If such support is forthcoming, global emissions could peak before 2030, with emission levels at the end of this decade being 1.4 per cent lower than in 2019. However, even the full implementation of both the unconditional and conditional elements of the NDCs would lead to an overshoot of the targets of the Paris Agreement – as alignment with 1.5°C and 2°C require cuts of 45 per cent and 25 per cent, respectively, by 2030 (relative to 2010 levels).46 A large number of countries are also making more long-term net zero emissions or carbon neutrality pledges. As of September 2021, just over 130 countries had made such commitments, but not all of them have formally presented them to the UNFCCC.47 Examples include large economies like China, Japan, Brazil, the US, South Africa, South Korea, and the EU, as well as climate-vulnerable developing countries like the Marshall Islands, Barbados, Kiribati and Bangladesh.48 Climate Action Tracker estimates that if these long-term targets – and the NDCs – are fully implemented, global warming could be limited to 2°C.49 Most of the net zero pledges are, however, formulated in vague terms that are not consistent with good practice. The long-term targets are, moreover, only credible if they are backed up by ambitious and robust 2030 NDCs,50 given that substantial cuts in emissions must occur this decade. An additional concern that has been raised when it comes to net zero pledges is that they may encourage reliance on negative emissions technologies, such as bioenergy with carbon capture and storage (BECCS), which have still to be tested at scale to assess land requirement, efficiency and economic viability.51 **[BOX 1 OMITTED]** The challenge of closing the gap Bridging the gap between current NDCs and targets that would keep warming to 1.5°C is a defining challenge for governments ahead of COP26. As mentioned, UNEP estimates that the ambition of 2030 targets would need to be enhanced fivefold vis-à-vis pledges made in 2015 to align with a 1.5°C pathway.53 Several large emitters – including the US and the EU – have now submitted their new or updated NDCs. According to Climate Action Tracker, the UK’s target is considered to be compatible with a 1.5°C pathway, while those of the US, EU, Japan and Canada are classified as ‘almost sufficient’.54 It is critical that all countries that have not yet submitted a new or updated NDC do so, and that these pledges are aligned with 1.5°C. It is equally important that countries that have submitted unambitious NDCs revisit their targets. The Paris Agreement states that parties may revise existing NDCs at any time, if the purpose is to enhance ambition.55 The G20 countries have a particularly important role to play. In July 2021, the Italian G20 presidency hosted the first ever G20 Climate and Energy Ministerial meeting. In the final communique the countries in the G20 stated that they ‘intend to update or communicate ambitious NDCs by COP26’.56 The importance of action from all members of the G20 is clear, as they collectively account for 80 per cent of global emissions and as UN Secretary-General António Guterres said, ‘there is no pathway to this [1.5°C] goal without the leadership of the G20’.57 With only a few weeks to go it is, however, unlikely that the 20–23 GtCO₂e gap in targets will be closed by COP26. At the UK-hosted COP26 ministerial in July, a number of ministers stressed that parties would need to respond to any gap remaining by the Glasgow conference. Some suggested that such a response could include a ‘clear political commitment’ to keep 1.5°C within reach, a recognition of the gap, and a plan to bridge it. More specific proposals of actions that could be taken, as part of the response, to keep the 1.5°C pathway alive were also discussed. Suggestions included, but were not limited to, encouraging countries whose NDCs are not consistent with 1.5°C to bring their 2030 targets in line before 2025 (when the third round of NDCs are due); calling for parties to submit concrete long-term strategies for reaching net zero; and/or sending clear signals to markets through actions like phasing out unabated coal, carbon pricing, fossil fuel subsidy reform, nature-based solutions, and decarbonizing transport.58 Achieving a positive COP26 outcome The ultimate benchmark for a high ambition outcome at COP26 is whether the new or updated NDCs are ambitious enough to align with a 1.5°C pathway. For many communities and ecosystems, the threat of different climate impacts between 1.5°C and 2°C – not to mention 3°C, 4°C or 5°C – is existential. Each increment of warming is anticipated to drive increasingly devastating and costly impacts, including extreme heatwaves, rising sea levels, biodiversity loss, reductions in crop yields, and widespread ecosystems damage including to coral reefs and fisheries.59 Keeping the goal of 1.5°C within reach will require substantial action this decade. Long-term targets to achieve net zero emissions or carbon neutrality have the potential to be powerful drivers of decarbonization but need to be supported by ambitious NDCs as well as concrete policies and sufficient investment. Should we reach COP26 without sufficient ambition on NDCs, parties would need to present a plan for how ambition will be raised in the early 2020s. This could include a COP decision or a political statement underscoring the need to keep warming to 1.5°C and inviting parties to revisit their NDCs earlier than the Paris timetable dictates (for instance in 2023 instead of 2025).60 To support more ambitious action, countries should look to expand international collaboration and accelerate decarbonization in key sectors. At COP26, parties can help boost the credibility of their pledges by showcasing policies, measures and sector initiatives that will accelerate decarbonization, including on the phase out of unabated coal and the increased use of electric vehicles (see Box 3). **[BOX 2 OMITTED] [FIGURE 3 OMITTED]** In the run-up to COP26, the UK government is mobilizing its counterparts and non-state actors to drive accelerated action on phasing out the use of unabated coal,65 accelerating the deployment of electric vehicles,66 protecting and restoring nature (nature-based solutions67), and aligning financial flows with the goals of the Paris Agreement.68 The role of the private sector is crucial in the transition to net zero economies and is recognized within the framework of the UNFCCC, as they can deliver funding, innovation and technology deployment at a pace and scale beyond that of most governments (see Box 1). It is hoped that some of these initiatives will lead to plurilateral agreements at or ahead of COP26, which could enhance the credibility of mitigation pledges and help keep the 1.5°C target within reach. Being able to showcase a package consisting of ambitious NDCs, plurilateral deals, and national policies at COP26 could generate positive momentum and create a sense of inevitability around the transition to net zero societies. **[BOX 3 OMITTED]** 03 Support to climate-vulnerable developing countries Increased action on climate finance, adaptation, and loss and damage is critical for supporting climate-vulnerable developing countries, strengthening trust and raising ambition on mitigation. The year 2020 was one of the warmest on record.80 As COVID-19 ravaged the world, extreme weather events continued to cause severe devastation. In Bangladesh, torrential rains submerged a quarter of the country,81 resulting in hundreds of deaths, mass displacement and damage to more than a million homes.82 Record-breaking floods in Sudan83 and Uganda84 also displaced hundreds of thousands, while super cyclone Amphan raged across South Asia.85 Extreme weather events were also a defining feature of the summer of 2021. An unprecedented heatwave may have killed almost 500 people in British Columbia,86 as well as a billion marine animals along the Canadian coastline.87 In the Chinese province of Henan people drowned in the subway after a year’s worth of rain fell in just three days.88 Germany and Belgium also experienced death and destruction as a result of severe flooding,89 while villages in Greece burned.90 The impacts of climate change are striking even harder than many anticipated,91 and as temperatures continue to rise extreme weather events are increasing in both frequency and intensity. Limiting global warming to 1.5°C is key to avoiding the most catastrophic events, but substantial measures must also be undertaken to adapt to climate change impacts and build resilience. As the summer of 2021 shows, no country is spared. It is, however, those who have emitted the least that are most at risk,92 and in many countries that are disproportionately affected by climate change – such as the least developed countries (LDCs)93 – financial constraints impede their ability to invest in adaptation, build resilience and deal with loss and damage.94 COVID-19 has aggravated this challenge: while industrialized countries have implemented unprecedented stimulus measures to support their economies – and vaccinated large parts of their populations – many developing countries remain in the midst of a health and economic catastrophe. Scaled up action on climate finance, adaptation and loss and damage are – in addition to increased ambition on mitigation – key priorities for climate-vulnerable nations ahead of COP26. Raised ambition and concrete delivery in these areas are critical for supporting those at the frontline of climate change, key to building trust, and could encourage some parties to raise the ambition of their NDC pledges. The implementation of many NDCs is, in addition, at least partly conditional upon receiving increased levels of finance, as well as other types of support.95 Honouring the $100 billion goal In 2009, developed countries committed to mobilizing $100 billion per year by 2020 for climate mitigation and adaptation in developing countries.96 This pledge was subsequently formalized in the Cancun Agreements in 201097 and reaffirmed in the Paris Agreement in 2015. The resources provided were to be ‘new and additional’98 and come from a variety of public and private sources.99 The $100 billion goal is a core element of the bargain underpinning the Paris Agreement.100 While achieving the mitigation and adaptation goals of the agreement will require trillions of dollars in investment – of which most will need to come from the private sector – the delivery of the $100 billion is critical to building trust between developed and developing countries,101 and is important for raising ambition on mitigation.102 The OECD estimates that $79.6 billion was mobilized in 2019, which is the most recent year for which official figures are available.103 In 2018, the figure was $78.9 billion, and in 2017 it was $71.2 billion.104 Though the verified figures for 2020 will not be available until 2022, it is clear the target was missed.105 Developed countries have, moreover, not yet been able to show that the pledge will be honoured in 2021, nor demonstrate conclusively how it will be met in the 2022–24 period.106 The pledge by developed nations to mobilize $100 billion to developing nations by 2020 is a commitment made in the UNFCCC process more than a decade ago. It’s time to deliver. How can we expect nations to make more ambitious climate commitments for tomorrow if today’s have not yet been met?107 Patricia Espinosa, 23 July 2021 How the goal is achieved matters. Only around one-fifth of bilateral climate finance is allocated to the LDCs,108 and locally led projects receive low priority.109 There are also concerns related to overreporting and lack of additionality. Oxfam estimates, for instance, that 80 per cent of public climate finance provided over the 2017–18 period took the form of loans or other non-grant instruments, and that the actual grant equivalent only accounted for around half of the total amount of finance reported.110 Furthermore, the Center for Global Development has found that almost half of the climate finance reported between 2009 and 2019 cannot be considered ‘new and additional’.111 There is, finally, an urgent need to close the adaptation finance gap (see next section),112 and facilitate access to finance.113 It is widely recognized that honouring the $100 billion goal is a prerequisite for success at COP26.114 The hitherto failure of developed countries to provide clarity on the issue is creating mistrust between countries,115 with the director of the International Centre for Climate Change and Development (who is also an adviser to the climate-vulnerable countries) conveying that, ‘if the money is not delivered before November, then there is little point in climate-vulnerable nations showing up in Glasgow to do business with governments that break their promises’.116 The chair of the LDC Group has also made it clear that, ‘[t]here will be no COP26 deal without a finance deal’. 117 The G7 countries play a critical role in mobilizing the $100 billion,118 and there was a hope that G7 leaders would increase their bilateral commitments substantially – and provide clarity on the $100 billion119 – when they convened in Cornwall in June 2021. Some new pledges were made. Canada, for instance, committed to doubling its climate finance through to 2025 (to CAD $5.3 billion), and Germany pledged to increase its annual commitments from €4 billion to €6 billion by 2025 at the latest.120 The G7 members collectively also committed to ‘each increase and improve’ their public climate finance contributions, and announced they would develop a new international initiative – ‘Build Back Better for the World’121 – the details of which have yet to be fleshed out. However, many developing country officials – and many observers worldwide – expressed disappointment with the summit outcome, with the climate minister of Pakistan describing the G7 commitments as ‘peanuts’.122 Several announcements on climate finance were also made during the 76th Session of the UNGA in September 2021. Most importantly, President Joe Biden pledged to double US climate finance (again) from the previously committed $5.7 billion to $11.4 billion per year by 2024. Actual delivery is, however, contingent on congressional approval.123 The EU – which already contributes around $25 billion in climate finance per year – also stepped up, announcing an additional €4 billion until 2027,124 while Italian Prime Minister Mario Draghi conveyed that Italy would shortly be announcing a new climate finance commitment.125 Though the US pledge in particular has been described as a critical step forward that ‘puts the $100 billion within reach’,126 more will need to be done.127 $100 billion is a bare minimum. But the agreement has not been kept. A clear plan to fulfil this pledge is not just about the economics of climate change; it is about establishing trust in the multilateral system.128 António Guterres, 9 July 2021

**1nc – vagueness**

**Vagueness –**

**The plan’s generic wording is manipulated in implementation – wrecks solvency**

**Baer 20** [Bill Baer former visiting fellow in governance studies at The Brookings Institution and assistant attorney general of the Antitrust Division and as the acting associate attorney general of the U.S. Department of Justice, 11-19-2020 <https://equitablegrowth.org/research-paper/restoring-competition-in-the-united-states/?longform=true>]

Meaningful antitrust reform should be a priority of the next administration and the 117th U.S. Congress. The challenge of drafting legislation is substantial. On the one hand, the legislation must be written for a judiciary that is both increasingly hostile to antitrust claims in general and increasingly textualist in its statutory interpretation. On the other hand, in the context of the antitrust laws, courts have often “abandoned statutory textualism” to interpret the laws “in favor of big business,”15 explains Daniel Crane, the Fredrick Paul Furth Sr. professor of law at the University of Michigan Law School. If given discretion to interpret new legislation, the current judiciary is likely to fall back on the same **skepticism** of antitrust enforcement that it has advanced over the past 40 years. Despite those concerns, legislation remains the best option to revitalizing antitrust enforcement. In drafting legislation, Congress can learn from the past. One case in point: The legislative history of the Celler-Kefauver bill, not its text, reveals the bill’s intent, which courts increasingly ignore.16 Congress can reduce that risk by **being explicit** in the text when vacating or rejecting existing precedent and when identifying relevant factors, such as the importance of protecting both actual and potential competition. Congress should identify in statute the elements sufficient to establish an antitrust violation **as precisely as possible**.

**Voting issue---**

**Aff conditionality destroys ground. 2AC clarifications dodge DA links and counterplan competition.**

### 1nc – section 5

#### *Next off – Section 5:*

#### The FTC should issue enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes a presumption against mergers and acquisitions among agribusiness firms. The FTC should release a clear statement and data sets that reflects this and enforce accordingly.

#### The cplan solves. It also competes – the FTC interprets current authority, instead of creating new prohibitions.

Kahn 21 et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

Section 5 of the Federal Trade Commission Act prohibits “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s congressionally mandated duty to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement. I. Background On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5 In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9 With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10 II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths. In 1914, Congress enacted the Federal Trade Commission Act to reach beyond the Sherman Act and to provide an alternative institutional framework for enforcing the antitrust laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 These concerns spurred the passage of the FTC Act, which created an administrative body that could police unlawful business practices with greater expertise and democratic accountability than courts provided.15 At the heart of the statute was Section 5, which declares “unfair methods of competition” unlawful.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides no private right of action, shielding violators from private lawsuits and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17 The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to leave it to the Commission to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the various unlawful practices, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20 The Supreme Court has repeatedly affirmed this view of the agency’s Section 5 authority, holding that the statute, by its plain text, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

#### Our planks about *clear statements* and *data sets* mean CP avoids politics and rollback.

* Assumes rollback efforts from either Political and Judicial actors.
* Empirical examples of FTC rollback go *Neg* – those episodes DID NOT include policy statements or data sets.

Kovacic 15 et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

Longevity for its own sake is hardly a worthy aim. There is little evident value in preserving a competition agency that ensures its survival by committing itself to unobtrusive law enforcement and declining to confront important and potentially controversial market failures. If a competition agency is to retain an economically significant enforcement role, one must ask how the agency is to perform that role without: (a) succumbing to pressure that undermines its capacity to make merits-based decisions about how to exercise its power to bring and resolve cases or use other instruments in its policy-making portfolio; and (b) losing the accountability and effectiveness that requires some connection to and engagement with the political process. What measures might enable a competition agency to resist suggestions that it undertake fundamentally flawed initiatives? How can one protect meritorious enforcement programs from political attack and intervention by political branches of government as such programs come to fruition? Presented below are some possible solutions. A. Greater Specification of Authority One approach is to avoid extremely open-ended grants of authority which application invites objections that the agency has overreached its mandate or inspires political demands that it use seemingly elastic powers to address all perceived economic problems. A fuller specification of powers and elaboration of factors to be considered in applying the agency’s mandate can supply a more confident basis for the authority’s exercise of power and a stronger means to resist arguments that it enjoys unbounded power. B. More Transparency, Including Reliance on Policy Statements and Guidelines Greater transparency in operations can increase the agency’s perceived legitimacy and supply a useful barrier to destructive political intervention. The foundations of a strong transparency regime include the compilation and presentation of complete data sets that document agency activity and matter-specific transparency devices, such as the preparation of statements that explain why the agency closed a specific investigation. Competition agencies can usefully rely extensively upon policy statements and guidelines to communicate their enforcement intentions and delimit the intended application of their powers. One purpose of such statements is to suggest how the agency defines the bounds of the more open-ended and inevitably ambiguous grants of authority its enabling statutes. For example, the FTC’s policy statements in the early 1980s concerning consumer unfairness and deception were important steps towards defining how the agency intended to apply its generic consumer protection powers. By articulating the bases upon which it would challenge unfair or deceptive conduct, the Commission strengthened external perceptions (within the business community and within Congress) that it would exercise its powers within structured, principled boundaries, and it increased, as well, its credibility before courts. The FTC has never issued a policy statement concerning its authority to ban unfair methods of competition, and the failure to do so has impeded the effective application of this power. A second important use of policy statements is to introduce plans for innovative enforcement programs. Before embarking upon a new series of initiatives, the competition agency would issue a policy statement that identifies conduct it intends to examine and, in stated circumstances, proscribe. Here, again, the FTC’s experience provides a useful illustration. Policy statements would be useful when the agency seeks to use section 5 of the FTC Act to reach beyond existing interpretations of the Sherman and Clayton Acts, or to apply conventional antitrust principles to classes of activity previously undisturbed by antitrust intervention. By issuing a policy statement before commencing lawsuits, the FTC would give affected parties an opportunity to comment upon the wisdom of the agency’s proposed course of action and to adjust their conduct. Such an approach would likely increase confidence within industry and within Congress that the Commission is acting fairly and responsibly, and it could well make courts more receptive to the FTC’s application of section 5 as well.

#### Exclusive FTC key – avoids false positives *AND* false negatives

Salop 13 Steven C. Salop, Professor of Economics and Law, Georgetown University Law Center - “Guiding Section 5: Comments on the Commissioners” -Scholarship @ Georgetown Law - #E&F - https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2284&context=facpub

Commissioner Wright apparently is most concerned with over-deterrence from the FTC’s administrative process, where the FTC acts as prosecutor and judge and is not subject to the constraints from an independent court deciding motions to dismiss and summary judgment.25 However, there also are forces tipping in the other direction. First, the FTC is an expert body with significant economics resources available, resources that presumably can be used to avoid false negatives *and* overdeterrence.26 Second, the Commission’s bipartisan nature and the use of majority rule also have provided significant constraints over most of its history. Finally, if this is the main concern, his remedy proposal instead might be that the FTC be forced to all litigate its complaints in District Court.27

#### Ripple effect means it’s economy-wide

Dagen 10 Richard – Formerly, Adjunct Professor Boston University School of Law (Aug 2005 - Dec 2006) specializing in Antitrust; former Kramer Fellow - Harvard Law School. At the time of this writing, the author served as Antitrust, High Tech and Antitrust Special Counsel to the Director, Bureau of Competition, Federal Trade Commission “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT” – BOSTON UNIVERSITY LAW REVIEW - Vol. 90 - #E&F - http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

Price cutting and choosing with whom to deal are among the areas of “core competition.” They also share the characteristic that they are transactional necessities. At the most basic level, for there to be a sale of goods or services in a free market, the seller must choose a product to sell – a process that might include product design, setting a price, and choosing with whom to purchase and sell. In a capitalist society, as opposed to a command economy, these are among the basic underpinnings of the market. It is always necessary to pick a price; it is always necessary to pick with whom to deal.80 In addition, it is impossible for firms to operate in a vacuum – they must continually observe and react to their competitors.

Although under some circumstances, even conduct involving transactional necessities or core competition can subject a firm to antitrust liability, on balance, antitrust law gives firms significant leeway in these areas.81 This limits court involvement in the most fundamental, internal workings of the firm.82 Courts are ill-equipped to do so “because it is sometimes difficult to distinguish robust competition from conduct with long-run anticompetitive effects.”83 A false positive involving an element of core competition or a transactional necessity can cause harm throughout the economy.

### 1nc – independence

#### *Next off is FTC independence:*

#### FTC independence in the US key to *global norms* that support agency independence. Vital for *free trade* and *GLO*.

* United States’ FTC practices are modeled *by several nations* – including South Korea – and *will continue to be modeled* by nations that are still amid transitions towards industrialization;
* Global attentiveness to the United States’ FTC practices *remains ongoing* and - “*to this day*” - are a *central obstacle* to aspired free trade norms;
* The root of the loss of the global public’s confidence in free trade stems from the success of zero-sum strategies. *The root of that* is an interpretation of the FTCA that permits politicized intervention;
* Ambiguity in the United States’ FTCA permit the Act to be exercised *EITHER with a great deal of agency discretion* – *OR* alternatively, *with the perceived influence of external political branches*;
* Current US FTC practices lean away agency independence – and that’s *a central obstacle* to international agencies countering the growth of protectionist mercantilist norms
* More broadly, this hampers *general support for internationalism/GLO*

Nam ‘18

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ABSTRACT: The Federal Trade Commission Act of 1914 (“FTC Act”), a model for many other countries that set up their own competition agencies, combines the control afforded by presidential appointment and removal powers over FTC commissioners with an exceedingly discretionary mandate. This Article contends that the FTC Act’s outmoded openness to strong presidential direction, where adapted abroad, has helped detract from antitrust regulator independence. Even advanced players in the liberal international economic order such as South Korea have made use of the United States’ original blueprint for unitary executive-stamped antitrust enforcement without sharing a long historical evolution of counterbalancing regulatory norms, e.g. the judicial check that was Humphrey’s Executor v. United States, 295 U.S. 602 (1935). Strong executive direction in antitrust enforcement is particularly suited to capitalist economies helmed by administrations with mercantilist policies, given their belief that the state and big business must cooperate in the face of zero-sum international competition. South Korean President Lee MyungBak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces preventing global convergence in antitrust enforcement, and of their roots. We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce which ought both to coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. —President Woodrow Wilson, September 1916 [Our companies] are fighting with unfavorable conditions amid competition in the global economy. To do so, they must be allowed to escape various regulations. Let’s take just a half step forward to move beyond the pace of change in the global economy. —South Korean President Lee Myung-bak, March 2008 It is clear that, at the beginning of the 21st century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions. —Joaquín Almunia, Vice-President of the European Commission for Competition Policy, April 2010 The [U.S.] Agencies do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties. Nor do the Agencies employ their statutory authority to further nonantitrust goals. —The U.S. Department of Justice and the Federal Trade Commission, April 1995 INTRODUCTION The International Competition Network’s founding in October 2001, with the aim of “formulat[ing] proposals for procedural and substantive convergence” among its stated goals,5 sought to usher in a future with more cosmopolitan and coherent global antitrust enforcement. Although U.S. regulatory leadership maintained that “consistently sound antitrust enforcement policy cannot be defined and decreed for others by the U.S., the EU, or anyone else,” many countries (turned) ~~looked~~ to the U.S. as a role model while developing their competition regimes.6 It is ironic, then, that to this day a central obstacle to the aspired international “culture of competition” can be found in none other than the influence of the U.S.’s own FTC Act.7 American antitrust priorities around the time of the legislation’s passage oscillated between tempering trusts and shepherding business to further national economic strength, all towards the domestic interest. They shaped a regulatory environment that would reemerge abroad in many later-developing countries. The deepening global retreat from internationalism *and* free market principles in the present day, with the specter of trade wars looming, is exacerbated by nationalist competition regimes that are derivative of a U.S. model predating the modern world economy. Domestic critics of open markets often overlook the U.S.’s own past vis-à-vis protectionist governments today. Illiberal or nominally liberal, they walk the kind of dirigiste path once treaded by the American School through the early twentieth century.8

#### Globally, independence of antitrust agencies will prove key – checks spiraling economic nationalisms that’ll crush liberal peace.

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National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquín Almunia warned of them years ago,152 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades.153 However, a creeping loss of public confidence in open markets—coupled with the obstacles to coherent global antitrust enforcement that bear the FTC Act’s influence, as illustrated in this Article—risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of protectionist silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic “end of history”154 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even perennial norms and conventions of the U.S. competition regime which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that carried over abroad to empower strong executives are likewise playing a paper tiger role domestically of late.155 Protectionist policies designed to compromise market competition—for all its documented excesses and inadequacies—would sap its creative vitality and the concurrent liberal peace156 often taken for granted. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country’s companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for “our country, right or wrong” protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act’s formative influence is not above scrutiny or reproach. Still-elusive realization of the liberal economic international order’s intended form will require an expanded constellation of independent competition regulators empowered to enforce antitrust laws consistently.

#### Global free trade reversals will cause *multiple existential impacts*.

* Arctic conflict
* Space conflict;
* Global nuclear prolif;
* Structural wars;
* Climate;
* Geo-engineering;

Langan-Riekhof ‘21

et al; Maria Langan-Riekhof is the Lead Author and is the new Director of the Strategic Futures Group at the National Intelligence Council, leading the Intelligence Community’s assessment of global dynamics and charged with producing the quadrennial Global Trends product for the incoming or returning administration. She has spent more than 27 years in the intelligence community as both a senior analyst and manager, serving at the CIA and on the NIC. She brings a background in Middle East studies and has spent more than half her career analyzing regional dynamics. Her leadership roles include: Chief of the CIA’s Red Cell, founder and director of the CIA’s Strategic Insight Department, and research director for the Middle East. She was one of the DNI’s Exceptional Analysts in 2008-09 and the Agency’s fellow at the Brookings Institution in 2016-17. She is a member of the Senior Analytic Service and the Senior Intelligence Service and hold degrees from the University of Chicago and the University of Denver - National Intelligence Council - Global Trends 2040 – Form the section: “Scenario Four – Separate Silos” - MARCH 2021 - #E&F - https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

With the trade and financial connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off. Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to develop nuclear weapons, as the ultimate guarantor of their security. Small conflicts occurred at the edges of these new blocs, particularly over scarce resources or emerging opportunities, like the Arctic and space. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, conflicts became endemic, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address climate changes, little was done to slow greenhouse gas emissions, and some states experimented with geoengineering with disastrous consequences.

*Note to students*: this ev appears to advance a cemented future – but it is an ebook report by the National Intelligence Council outlining possible futures \*if\* certain premises were to take place. Perhaps this is best explained by an except from the opening of this report: “Welcome to the 7th edition of the National Intelligence Council’s Global Trends report. Published every four years since 1997, Global Trends assesses the key trends and uncertainties that will shape the strategic environment for the United States during the next two decades. Global Trends is designed to provide an analytic framework for policymakers early in each administration as they craft national security strategy and navigate an uncertain future. The goal is not to offer a specific prediction of the world in 2040; instead, our intent is to help policymakers and citizens see (aware of) what may lie beyond the horizon and prepare for an array of possible futures”.

**1nc – t-core**

**Core antitrust laws are economy wide – they’re not**

Gerber 20 --- David J Gerber, Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust”, Ch. 1, page 15, 2020, https://oxford.universitypressscholarship.com/view/10.1093/oso/9780198727477.001.0001/oso-9780198727477-chapter-2

C. **A Core Definition** The Guide uses the **term**s “competition law” and “antitrust law” to refer to **a general domain of law** whose object is to deter **private restraints** on **competitive conduct**. We look more closely at the terms: 1**. “General”—**The laws included are those that are **applicable throughout an economy** and thereby provide a framework for **all market operations** (there are always some exempted sectors). Laws dealing only with **specific markets** (e.g., telecommunication) **do not play that role.** 2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them. Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes. 3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market. 4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

**Vote neg for ground --- sectors are boundless and create uniqueness and link unpredictability for topic specific disads**

### 1nc – estados

#### The fifty states and relevant territories should:

#### engage in multistate antitrust action and enforcement over anticompetitive business practices in agriculture,

#### allocate sufficient resources for effective enforcement,

#### coordinate and engage in all necessary intel sharing

#### States solve best---multistate organizations, expanded jurisdiction, and can “fill the gap”

Rauch 20 Daniel E. Rauch J.D. Yale Law School. (2020 ). ARTICLE: SHERMAN'S MISSING "SUPPLEMENT": PROSECUTORIAL CAPACITY, AGENCY INCENTIVES, AND THE FALSE DAWN OF ANTITRUST FEDERALISM. *Cleveland State Law Review*, 68, 172. <https://advance-lexis-com.proxy2.cl.msu.edu/api/document?collection=analytical-materials&id=urn:contentItem:5YDM-6NS1-FCK4-G4MV-00000-00&context=1516831>. {DK}

In 2020, as in 1890, states attorneys general have much to offer antitrust enforcement. Illegal anticompetitive conduct is often concentrated locally, rather than nationally, making state-level enforcement especially appropriate. 202Link to the text of the noteMany states have antitrust statutes (or bodies of state law) that allow for prosecutions that the federal laws do not. 203Link to the text of the noteState governments often will have better knowledge of local economic conditions than distant agencies in Washington, making them natural choices for [\*210] antitrust enforcement. 204Link to the text of the noteAnd if the federal government fails to enforce the antitrust laws, state attorneys general often have the ability and political incentives "step up" to "fill the void." 205Link to the text of the note Yet, if the early failure of antitrust federalism holds a single lesson, it is that even such compelling political, historical, and economic imperatives are, without more, insufficient to spur state antitrust action. Unless state prosecutors have the capacity and incentives to take on the antitrust challenge, they will not act. What does this mean for today's state antitrust enforcers? On one hand, the years since 1890 have seen several innovations that substantially mitigate the problem of prosecutorial capacity. Multistate organizations like the National Association of Attorneys General (NAAG) have allowed for coordination and information sharing between attorneys general on antitrust matters, thus reducing the costs and burden of such cases. 206Link to the text of the noteLikewise, the rise of multistate antitrust suits brought jointly by dozens of states allows for cost-and-capacity-sharing. 207Link to the text of the noteChanges in federal law, like the Hart-Scott-Rodino Act of 1976, created an economic incentive for states to pursue antitrust cases by codifying the ability of state attorneys general to sue as parens patriae and by offering states treble damages when they prevail (a strong economic incentive if ever there was one). 208Link to the text of the note Going further, the federal government has sometimes expressly subsidized state antitrust efforts, as with the supplemental funding offered in the Crime Control Act of 1976. 209Link to the text of the noteAnd in some states, the capacity of the attorney general's office has increased to levels inconceivable at the turn of the century: New York's Attorney General, for instance, supervises over 1,800 employees, 210Link to the text of the notewhile California employs a staggering [\*211] 4,500. 211Link to the text of the notePerhaps because of these shifts, it is unsurprising that in recent times at least some state attorneys general have heeded the call to enforce state and federal antitrust laws, from local investigations of healthcare consolidation 212Link to the text of the noteto multistate actions against Silicon Valley behemoths like Apple and Amazon. 213Link to the text of the note

### 1nc – ag cp

#### The United States federal government should:

#### redirect agriculture resources in accordance with sustainable practices as outlined in the Searchinger evidence,

#### condition agriculture funding and credit on compliance with sustainable practices and land retirement as outlined in the Searchinger evidence,

#### structure incentive programs so they offer graduated payments for higher climate performance,

#### provide funding for agricultural research and development over sustainable practices,

#### coordinate with other governments and international institutions to encourage the same behavior.

#### Conditioning financial support on sustainable strategies solves environmental collapse and corporate farm takeover.

Searchinger et. al 20 – [[Tim Searchinger - Senior Research Scholar at the Princeton School of Public and International Affairs and Senior Fellow at World Resources Institute, where he serves as technical director of its Food Program, Chris Malins, Patrice Dumas, David Baldock, Joe Glauber, Thomas Jayne, Jikun Huang, Paswell Marenya, May 5th 2020, “Revising Public Agricultural Support to Mitigate Climate Change”, <https://openknowledge.worldbank.org/handle/10986/33677>, eph]

The countries that produce two-thirds of the world’s agriculture provided US$600 billion per year in agricultural financial support on average from 2014 to 2016. Half of this support occurred through direct government spending or targeted tax benefits and half occurred through market barriers that increase prices to consumers. This support amounted to nearly 30 percent of the total value added by agricultural production in these countries. This report addresses the extent to which these transfers help boost agricultural production and mitigate emissions from agriculture and how support programs might be changed to do better. Agriculture generates roughly 25 percent of global greenhouse gas (GHG) emissions, of which slightly more than half come from the production process, which generates mainly methane and nitrous oxide. The remaining GHG emissions from agriculture are generated through the carbon released by the clear- ing of forests and woody savannas for agricultural expansion and the degradation of peat soils. Absent mitigation, the current agricultural emissions of roughly 12 billion tons per year of carbon dioxide equivalents (CO2e) are likely to rise to 15 billion tons per year by 2050. In this scenario, agriculture alone will use up 70 percent of the annual allowable emissions budget for all human emissions, including energy, that will be necessary to hold warming to international climate goals. The single most important source of mitigation in agriculture results from increases in the efficiency with which agriculture uses natural resources and chemical inputs. That includes more efficient use of land, which includes increasing yields and so helps to avoid land use change. That also involves more efficient use of animals, water, and chemicals. These productivity gains also can contribute to increased incomes for farmers. For productivity gains to result in climate mitigation they frequently need to be explicitly linked to the protection of forests and other native landscapes because they can otherwise encourage local land expansion. Mitigation depends particularly on improvements in management in the use of ruminant livestock (mainly cattle, sheep, and goats), which generate roughly half of all emissions from production and land conversion. To achieve climate goals, mitigation efforts must also strongly emphasize innovations, for which there are many promising options. Only a modest portion of current agricultural support has the potential to help mitigate emissions or even to increase production efficiencies generally. The roughly US$300 billion in market price supports boost prices to some farmers but at costs to others. Of the US$300 billion in direct spending, roughly 43 percent is designed to support farmer income and another 30 percent sup- ports production. Only 9 percent of direct spending explicitly supports conservation, while another 12 percent supports research and technical assistance. Over the past two decades, some governments have decoupled payments from conditions on farm production. Governments do so in different ways and to different degrees, but in general, this decoupling reduces the likelihood that subsidies will encourage inefficient production. Input subsidies have been and remain a particularly problematic form of coupled subsidies. Fertilizer subsidies have contributed to the overuse of nitrogen fertilizer in a number of countries, including both China and India, which has resulted in higher GHG emissions and other environmental problems. China has recently phased out fertilizer subsidies. Whether decoupling reduces global emissions depends on how production switches between regions. While decoupling is unlikely to lead to large, global GHG mitigation, the experience of New Zealand, which almost eliminated coupled agricultural subsidies overnight in 1986, illustrates potential gains through increased efficiency and reduced environmental impacts. Price support payments and trade barriers help reduce farmer risk and maintain income for beneficiaries, but they are inefficient in addressing the risks to poorer, smaller farmers, who are prone to poverty traps. Such supports almost always benefit larger farms within a country, and market price supports benefit domestic farmers at the expense of foreign farmers. Some support payments are capitalized into land values, which benefits existing owners but not farm workers, renters, or subsequent owners. The United States and the European Union (EU) have moved to impose some environmental conditions on receipt of farm payments. The prospect of environ- mental conditions holds some promise. Although enforcement is minimal in the United States, conditional payments have probably helped protect some wet- lands and modestly reduced soil erosion there. They have helped protect the most valuable grasslands in Europe. Although no studies yet support the asser- tion, European conditions on support payments have possibly also increased compliance with other environmental laws such as limits on nitrogen. The last round of European agricultural reforms conditioned 30 percent of payments to farmers on additional conservation measures; however, the effect remains unclear and likely modest because criteria were largely unambitious. Case studies of Brazil, China, India, the United States, EU, and Sub-Saharan Africa explore differences in support levels and approaches that confirm these general observations. Significant portions of U.S. and EU spending classified by the OECD as conservation probably have limited effect. The largest land retirement programs to reforest highly sloped cropland and to restore degraded grass- lands in vast parts of the country have been in China. These Chinese programs have had success in reducing soil erosion and moderate success in sequestering carbon. The evidence also suggests that the programs could do more to sequester carbon and that the forest program may have had adverse effects on biodiversity by emphasizing plantation forests. The case studies also highlight initiatives that hold promise for climate change mitigation. They detail efforts in Brazil to tie farm credit to forest protection while boosting grazing productivity. The India case study highlights efforts to require that nitrogen be coated with a compound designed to reduce losses and increase efficiency. Finally, the case studies detail some successful efforts in China to increase efficiency of nitrogen use and specific efforts in Africa to increase dairy efficiency by improving forage quality. The case studies also illustrate a small start toward funding integrated, coordinated projects. Such integrated projects target funds to their best uses, encourage farmers to achieve higher levels of performance, and occasionally support these efforts with ongoing research and technical assistance. The United States has created mechanisms for using a portion of its conservation programs for such integrated purposes. Further, integrated projects provide some of the promising uses of EU funding for rural development. Overall, the study finds that there is substantial potential to redirect farm support toward climate change mitigation. Market price supports are the most challenging to redirect, but Europe has created a model of phasing them down while boosting direct aid. Key recommendations are as follows: Takeaway 1: Redirect funding to focus on mitigation, including measures that increase efficiency in the use of natural resources. Takeaway 2: Focus land retirement efforts where land is becoming abandoned, where farmland is unproductive and unimprovable and peatlands, and emphasize restoration of native forests. Takeaway 3: Condition farm payments on protection of native areas to avoid further land clearing. Takeaway 4: Structure incentive programs so they offer graduated payments for higher climate performance. Takeaway 5: Prioritize innovative, performance-based mitigation strategies. Takeaway 6: Combine financial support for mitigation with requirements for improvements to avoid leakage, moral hazard, and waste of resources. Takeaway 7: Prioritize coordinated projects across multiple producers, integrated with research and technical assistance. Because of the importance of this redirection of support for whether countries achieve climate goals, and because of the need for international cooperation push needed innovations, global action is required.

## case

### 1nc – farms

#### The ag industry is facing an inevitably credit collapse – zeros the aff but the cp can solve

Willingham 21 – [Caius Z Willingham - researches rural economic development and analyzes economic concentration and antitrust policy, with an eye toward its impacts on workers, farmers, and small businesses, January 14th 2021, “Promoting Climate-Resilient Agricultural and Rural Credit”, <https://www.americanprogress.org/issues/economy/reports/2021/01/14/494574/promoting-climate-resilient-agricultural-rural-credit/>, eph]

The implications of a climate farm crisis on agricultural lenders Although the ripples caused by a climate-related agricultural downturn would be widespread, any impacts would be felt most acutely by firms that specialize in agricultural lending.43 Namely, community banks in farm country may be forced to fold, potentially leaving some rural communities without easily accessible credit or banking services. Similarly, if the magnitude of the climate crisis is catastrophic, the Farm Credit System could face the risk of insolvency, as was the case during the 1980s farm crisis—a prospect that would necessitate a sizable infusion of federal dollars. Policymakers should act now to prepare for the impact of climate change on agricultural lending in order to ensure that farmers and ranchers will continue to be able to access capital. Commercial banks As climate change hits America’s farms and deals historic damage to the agricultural economy, banks will surely feel the pain of farm bankruptcies. Though the crop insurance system will absorb some of the damage of climate destruction, only a quarter of U.S. production value is covered by crop insurance.44 Moreover, the insurance sector itself has significant climate risk exposures as well. Agribusinesses and food processors will also likely take a hit indirectly as climate-induced disasters disrupt their supply chains, broadening the impact throughout the financial sector. Climate change may render portions of U.S. farmland unproductive, while other U.S. farmers and ranchers are forced to quickly adapt their practices and crops to shifting climates. The current value of U.S. farmland is about $2.5 trillion.45 As the climate crisis drives down the productivity—and, therefore, the value—of some farmland, it may render loan exposures in the sector impaired.46 These real estate assets will, in some sense, become an impaired or “stranded” asset—one that has lost some or all of its value. Impaired assets may need to be written down in value, which could affect the capital of the banks that made those loans. The implications of this are grave; the 1980s farm crisis was in part instigated by a precipitous drop in farmland values.47 Firms with large agricultural exposures, such as community banks in certain rural areas, may be especially vulnerable. About half of all farm loans are held by commercial agricultural lenders—defined as having at least 25 percent of their portfolio consist of agricultural investments.48 These specialized banks are less likely to have a diverse enough portfolio to withstand a wave of farm bankruptcies, putting them at higher risk of insolvency in the event of a farm economy crash. While about half of large financial institutions incorporate climate change in their risk assessments, farm lenders are much less likely to engage in this practice.49 However, even for firms that do incorporate climate into their risk assessments, banking supervisors and market regulators have not put in place the oversight and transparency tools to give regulators and investors the insight necessary for effective risk management and, ultimately, to contribute to the reduction of climate as a systemic risk through reducing the financing of fossil fuels and carbon-intensive industrial processes. Moreover, when financial firms do incorporate climate change in their risk assessments, the factors they choose may not be sufficiently comprehensive to capture the whole picture. In contrast, the Bank of England has developed a thorough framework for evaluating the U.K. finance sector’s resilience to climate change under a range of scenarios.50 Public risks As discussed earlier in this report, the agricultural credit system is marked by extensive government involvement in order to facilitate credit access and mitigate the risk inherent to farming. Because it lends directly to farms, guarantees loans, chartered the FCS, and established Farmer Mac, the federal government has a huge stake in promoting a resilient farm lending system. Consequently, taxpayers will be on the hook for some amount of financial stabilization if the farm economy is severely affected by the stress of climate change. The most direct financial injury to the federal government in the event of a climate-instigated farm economy collapse would be the cost of defaults on the loans the USDA and other agencies either disbursed directly to farmers or guaranteed. The Farm Service Agency alone holds about $11.8 billion in farm debt, not to mention the smattering of smaller loan programs throughout the USDA and beyond.51 For example, the Small Business Administration’s 7(a) lending program also lends to farming operations in significant volumes. For example, in 2019, the SBA determined that highly integrated poultry operations do not qualify as independent small businesses after an Office of Inspector General examination discovered that about $1.8 billion in loans were made to chicken growers who were in fact affiliated with monopolistic poultry integrators rather than independent operations.52 Through programs such as these, the federal government assumes a significant amount of liability. The 1980s farm crisis forced Congress to reform the public institutions responsible for agricultural lending, putting in place regulations and structures that unquestionably provide a crucial buffer against future economic upheavals. However, the oncoming climate crisis is likely to rival even the crash of 1980 in its severity. The 1980s farm crisis and the resulting wave of bankruptcies and defaults threw the FCS off-kilter, and Congress was forced to swoop in with $4 billion of relief to stabilize it.53 Although several reforms, such as the creation of the secondary loan market through Farmer Mac, have served to bolster the integrity of the farm credit market, climate change may serve as the first real test of the efficacy of these institutions since the 1980s. Currently, the stress test Farmer Mac undergoes only requires it to use default rates on par with the worst two consecutive years in its past.54 By definition, this stress test does not anticipate the damage that climate change might deal the financial sector in the coming years.

#### CAFOS are inevitable, necessary, and more ecofriendly than any alternatives

Nordhaus & Blausteing-Rejto 21 Ted Nordhaus is a leading global thinker on energy, environment, climate, human development, and politics. He is the founder and executive director of the Breakthrough Institute and a co-author of An Ecomodernist Manifesto. Twitter: @TedNordhaus Dan Blaustein-Rejto is the director of food and agriculture at the Breakthrough Institute, where he analyzes the economics and potential of sustainable agriculture policies and practices. He has conducted research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition. APRIL 18, 2021. “Big Agriculture Is Best.” <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/> {DK}

In the popular bourgeois imagination, the idealized farm looks something like the ones that sell produce at local farmers markets. But while small farms like these account for close to half of all U.S. farms, they produce less than 10 percent of total output. The largest farms, by contrast, account for about 50 percent of output, relying on simplified production systems and economies of scale to feed a nation of 330 million people, vanishingly few of whom live anywhere near a farm or want to work in agriculture. It is this central role of large, corporate, and industrial-style farms that critics point to as evidence that the food system needs to be transformed. But U.S. dependence on large farms is not a conspiracy by big corporations. Without question, the U.S. food system has many problems. But persistent misperceptions about it, most especially among affluent consumers, are a function of its spectacular success, not its failure. Any effort to address social and environmental problems associated with food production in the United States will need to first accommodate itself to the reality that, in a modern and affluent economy, the food system could not be anything other than large-scale, intensive, technological, and industrialized. Not so long ago, farming was the principal occupation of most Americans. More than 70 percent labored in agriculture in 1800. As late as 1900, some 40 percent of the U.S. labor force still worked on farms. Today, that figure is less than 2 percent. The consolidation of U.S. agriculture has been underway for more than 150 years. First came irrigation and ploughs, then better seeds and fertilizers, and then tractors and pesticides. With each innovation, farmers were able to produce larger harvests with fewer people and work larger plots of land. Better opportunities drew people to cities, where they could get jobs that provided higher wages and, thereby, produced greater economic surplus—that is, profits and ultimately societal wealth. The large-scale migration of labor from farms to cities pushed farmers to invest even more in labor-saving and productivity-enhancing practices and technologies in a virtuous cycle of urbanization, agricultural intensification, and economic growth that is the hallmark of all affluent societies. It is not a stretch to say that the United States is wealthy today because most of its people work in manufacturing, services, technology, and other sectors of the economy. In this, the country is not alone. No nation has ever succeeded in moving most of its population out of poverty without most of that population leaving agriculture work. That transition often isn’t easy. Millions of Black Americans made the difficult journey from tenant farming in the South to factory work in the North, where they faced new forms of racism even as they escaped the tyranny of sharecropping. More recently, small farmers have struggled to survive as increasingly high agricultural productivity and falling commodity prices tilted the playing field toward large farms. Rural communities have likewise suffered as dramatic improvements in labor productivity have shrunk employment in agriculture. But over the long term, the living standards and life opportunities offered in the modern knowledge, service, and manufacturing economies have proved vastly greater than anything possible under the agrarian social and economic arrangements that most Americans over the last two centuries happily abandoned—and that too many Americans today romanticize. Modern life required not only liberating most Americans from agrarian labor but also the development of a food system capable of getting food from farms to the cities where increasing numbers of Americans lived and worked. A food system that lost much of its harvest to pests and spoilage needed to dramatically cut losses even as its bounty needed to travel farther and farther. For this reason, the rise of modern agriculture is as much a story of railways and highways as combines and tractors, refrigeration and grain elevators as pesticides and fertilizer. The development and growth of feedlots followed a similar path. As the historian Maureen Ogle recounts in her magnificent history of the beef industry, In Meat We Trust, the first feedlots grew out of the stockyards of Chicago and Kansas City in the late 19th century. The most efficient way to get beef to burgeoning markets in America’s cities was to drive cattle to these new rail centers, where they were finished, slaughtered, and then shipped throughout the country by rail. After World War II, beef production and feedlots expanded massively, driven not so much by corporate greed as by rising demand for beef from the United States’ newly prosperous middle class and by a scarcity of labor as ranch hands returning from the battlefields of Europe and the Pacific chose to pursue better economic opportunities in the postwar economy. Debates about the social and environmental impacts of America’s food system cannot be disentangled from the basic reality that in a modern industrialized society, most people will live in cities and suburbs and will not work in agriculture. As a result, most food will need to be produced by large farms, with little labor, far away from the people who will consume it. Many sustainable agriculture advocates tout the recent growth of organic agriculture as proof that an alternative food system is possible. But growing market share vastly overstates how much food is actually produced organically. In reality, organic production accounts for little more than 1 percent of total U.S. agricultural land use. Meanwhile, only a bit more than 5 percent of food sales come from organic producers, mostly because organic sales are overwhelmingly concentrated in high-value sectors of the market, namely produce and dairy, and fetch a premium from well-heeled consumers. Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops. Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well. That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

#### Alt cause to sustainable farming---money

Clouse 20 CJ Clouse is an independent environmental journalist who specializes in covering solutions to the climate, biodiversity and waste crises. “America is hungrier than ever for sustainable food systems. Can we build them?” November 2, 2020. <https://www.greenbiz.com/article/america-hungrier-ever-sustainable-food-systems-can-we-build-them> {DK}

At GreenBiz Group’s virtual clean economy conference, VERGE 20, last week, speakers and participants addressed questions such as these, discussed how to make sure that these changes stick and identified what challenges stand in the way. During a session delving into lessons from the pandemic, panelists agreed that the No. 1 barrier to changing the current food system is financing. "The financial services that are out there … are really not calibrated for the moment we’re in," said Janie Hipp, CEO of the Native American Agriculture Fund. "If we’re going to actually build an agile and resilient system going forward, then we have to invest in it." One example of the financial challenges sustainable farms face comes in the form of crop insurance. If a farmer wants to transition a farm from conventional practices to organic or regenerative ones, costs are associated with that transition. However, insurance policies typically do not cover them, so the farmer is forced to take on the extra up-front costs and risk. The same holds true for traditional agriculture financing, developed for conventional farming. Loans are typically underwritten based on the equipment, inputs, volume, prices and insurance coverage of conventional growers. These factors are different for organic and regenerative farmers, so the numbers often don’t work, resulting in loans being denied or unaffordable.

#### No monocoltures impact - seed bank solves crop biodiversity and disease

**AP 7** (“Doomsday seed bank gears up for business,” <http://www.msnbc.msn.com/id/21825614>)

Refrigeration units on Friday begin cooling a new doomsday vault dug into an already frigid Arctic mountainside to protect the world's seeds in case of a global catastrophe. Norway blasted the Svalbard Global Seed Vault deep into the permafrost of a remote Arctic archipelago to protect as many as 4.5 million of the world's agricultural seeds from climate change, plant epidemics, natural disasters or war. It is due to open Feb. 26. The Svalbard Archipelago, 300 miles (480 kilometers) north of the mainland, was selected because of its remote location far from many threats, as well as for its cold climate and permafrost. "It's very satisfying to see the vault evolve from a bold concept to an impressive facility that has **everything we need to protect crop biodiversity,**" said Norway's Agriculture Minister Terje Riis-Johansen. Norway first proposed building what it called a "Noah's Ark" for the world's seeds in June 2005, and started construction a year later, blasting a nearly 400-foot (120-meter) tunnel into a frozen mountain and placing the vault for foil-wrapped seeds deep inside. Each sample holds about 500 seeds. Over the next two months, powerful cooling units will bring its temperature down to the target of about zero degrees Fahrenheit (-18 degrees Celsius) from the current 23 degrees F (-5 degrees C). "The seed vault is the perfect place for keeping seeds safe for centuries," said Cary Fowler, executive director of the Rome-based Global Crop Diversity Trust, a project partner. "At these temperatures, seeds for important crops like wheat, barley and peas can last for up to 1,000 years."

#### Aff can’t solve food security

Philip Watson & Jason Winfree, 21. Watson is an Associate Professor, Agriculture Economics & Rural Sociology at the University of Idaho. Winfree is an Associate Professor of Agricultural Economics and Rural Sociology at the University of Idaho. "Should we use antitrust policies on big agriculture?" Applied Economic Perspectives and Policy (2021): 1-14.

Market control and food security/safety

Others argue that antitrust laws should be used in agricultural markets owing to the amount of control certain firms have in the food supply and the potential effect that this might have on food security and safety (Hendrickson et al., 2017). The market control concern is similar to the arguments being made to break up technology firms such as Google, Twitter, and Facebook, and is again somewhat subject to the scrutiny of contestability. While technology firms often have a large share of the social media market, these markets could be thought of as contestable, and consumers and competitors are free and able to switch platforms. It is difficult to say whether this is comparable in food markets. While many aspects of the food industry might be considered contestable, especially in the long term, large sunk costs may prevent some competition in some markets. Certainly, control of the food supply, or even widespread adoption of technology, can generate risk. For example, in 1970, over 80% of corn in United States was Texas cytoplasmic male sterile corn. This type of corn was susceptible to fungus (Southern corn leaf blight) and caused a drastic reduction in corn yield. If market concentration creates less genetic diversity, it is possible that this is a cost. However, the association between market concentration and food safety is not entirely clear and using antitrust with this intention would be complex. For example, as previously stated, large firms can often implement safety standards more easily. While controlling the food supply is certainly an incredible responsibility with an enormous downside potential, it is not clear how much actual power firms have and why this power would harm consumers. This may be an area of research that might help inform this policy process.

#### No food wars

Vestby et al 18 [Jonas Vestby, Doctoral Researcher at the Peace Research Institute Oslo, Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography, “Does hunger cause conflict?”, 5/18/18, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests. Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

#### GMOs solve climate change – increases crop resiliency to climate change

Joan **Conrow, 18**. Journalist and editor specializing in environmental issues, biotechnology, and agriculture. BA in history and journalism. “Study: GMO crops could help offset climate change impacts”, Cornell Alliance for Science, November 30, 2018. [https://allianceforscience.cornell.edu/blog/2018/11/study-gmo-crops-helps-offset-climate-change-impacts/](https://allianceforscience.cornell.edu/blog/2018/11/study-gmo-crops-help-offset-climate-change-impacts/))

New research suggests that the type of yield gains made possible by **genetic engineering (GE) will be needed to offset climate change impacts on agriculture.** The researchers said their study, published yesterday in [Environmental Research Letters](http://iopscience.iop.org/article/10.1088/1748-9326/aae9b8/meta), has “important implications for regions lagging in the adoption of new technologies which could help offset the detrimental effects of climate change.” Though agricultural productivity in [Africa](https://theconversation.com/climate-change-is-hitting-african-farmers-the-hardest-of-all-40845) and [Asia](https://www.sciencedirect.com/science/article/pii/S2095311913607017) is predicted to be heavily impacted by climate change, political leaders in those regions hassssssssssve been slow to adopt GE technology in the face of intense opposition driven primarily by western-funded anti-GMO activists. However, this new study suggests that nations may not have the luxury of avoiding new technology if they want to ensure food security in a warming world. “The growth rate of crop yields in the coming decades will have serious implications for the global food supply under climate change,” the researchers wrote. “Our results suggest that US maize yields could stagnate under a business-as-usual scenario even with bold assumptions about the sustained growth in crop yields. This has serious implications for other crops and countries as well, as there are many large, economically relevant regions in the world where technology adoption lags and the use of GE crops are prohibited. “If the relative yield gains estimated here are any indication of the potential for other crops and/or regions, then the adoption of new technologies such as GE varieties may constitute a potentially fruitful adaptation strategy for counterbalancing the effects of climate change,” the study concluded. Researchers Ariel Ortiz-Bobea, assistant professor of applied economics and management at Cornell University, and Jesse Tack, associate professor of agricultural economics at Kansas State University, used modeling to evaluate the impact of climate change on US maize yields in light of the productivity gains associated with the period of rapid adoption of GE seeds. “We find that yield gains on the order of those experienced during the adoption of GE maize are needed to offset climate change impacts under the business-as-usual scenario, and that smaller gains, such as those associated with the pre-GE era in the 1980s and early 90s, would likely imply yield reductions below current levels,” the researchers wrote. “Although this study cannot identify the biophysical drivers of past and future maize yields, it helps contextualize the yield growth requirements necessary to counterbalance projected yield losses under climate change.” The research is important because “without substantial gains in productivity, the rising global demand for food could lead to higher food prices thereby incentivizing conversion of rainforests, wetlands, and grasslands to farmland,” the economists wrote. The study reviewed production data from 500 counties in eight Midwestern states — Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin — that comprise America’s “corn belt.” The maize crops there are mostly rain-fed. Using climate change models, the researchers then calculated county-level climate change impacts on yields in percentage terms. They found that maize yield trends increased by almost 70 percent around the period of rapid adoption of GE seeds, and that “technological change has impacted different regions very differently. That is, while new technologies such as GE seeds are widely adopted, benefits can vary substantially across alternative growing conditions associated with local biotic and abiotic factors and interactions thereof.” The researchers also noted that “emerging technologies in genome editing as well as an increased emphasis on abiotic stress tolerance (e.g. drought tolerance) could help maintain or even accelerate recent yield growth trends. In addition, the rise in computing power and fine-scale data collection and analysis may pave the way for a digital revolution that may also contribute to such trends through enhanced precision agriculture. It remains to be seen whether these technological revolutions and the legal framework to reward such innovations and protect intellectual property rights will unfold rapidly enough to counterbalance the projected effects of a changing climate.” The authors did note two caveats: “First, while our trend analysis identifies a yield trend increase around the time of rapid adoption of GE seeds, our study is unable to identify the biophysical source of this change. There could be other confounding factors that generated yield gains parallel to the introduction of GE maize in the US such as the adoption of precision agricultural tools such as high-speed precision planters and auto-steer tractors. Second, our climate change projections do not factor in fertilization effects of increased atmospheric CO2 levels nor behavioral adaptation to climate change. These additional factors could result in potentially more optimistic impacts.”

#### No climate impact

Zycher 21 --- Benjamin Zycher is a resident scholar at the American Enterprise Institute, doctorate in economics from UCLA, a Master in Public Policy from the University of California, Berkeley, and a Bachelor of Arts in political science from UCLA, “The Case for Climate-Change Realism”, National Affairs, Summer 2021, https://www.nationalaffairs.com/publications/detail/the-case-for-climate-change-realism

Beyond exhibiting extreme overconfidence in a cherry-picked analysis of climate-change causes, politicians and activists frequently ground their alarmism in frightening predictions about consequences that are likewise far from certain. This is not only true within the very new (and still quite unreliable) field of predictive climate science; it is true even in the context of ongoing climate phenomena. Indeed, politicians and journalists frequently characterize dramatic or unusual climate phenomena as the product of anthropogenic climate change, yet there is little evidence to support those claims

For one thing, there is no observable upward trend in the number of "hot" days between 1895 and 2017; 11 of the 12 years with the highest number of such days occurred before 1960. Since 2005, NOAA has maintained the U.S. Climate Reference Network, comprising 114 meticulously maintained temperature stations spaced more or less uniformly across the lower 48 states, along with 21 stations in Alaska and two stations in Hawaii. They are placed to avoid heat-island effects and other such distortions as much as possible. The reported data show no increase in average temperatures over the available 2005-2020 period. In addition, a recent reconstruction of global temperatures over the past 1 million years — created using data from ice-sheet formations — shows that there is nothing unusual about the current warm period.

Rising sea levels are another frequently cited example of impending climate crisis. And yet sea levels have been rising since at least the mid-19th century. This rise is tied closely with the end of the Little Ice Age that occurred not long before, which led to a rise in global temperatures, some melting of sea ice, and a thermal expansion of sea water. There is some evidence showing an acceleration in sea-level rise beginning in the early 1990s: Satellite measurements of sea levels began in 1992 and show a sea-level rise of about 3.2 millimeters per year between 1993 and 2010. Before 1992, when sea levels were measured with tidal gauges, the data showed an increase of about 1.7 millimeters per year on average from 1901 to 1990.

But because the datasets are from two different sources — satellite measurements versus tidal gauges — they are not directly comparable, and therefore they cannot be interpreted as showing an acceleration in sea-level rises. Moreover, the period beginning in 1993 is short in terms of global climate phenomena. Since sea levels have risen at a constant rate, remained constant, or even fallen during similar relatively short periods, inferences drawn from them are problematic. It is of course possible there has been an acceleration in sea-level rise, but even still, it would not be clear whether such a development stemmed primarily from anthropogenic or natural causes; clearly, both processes are relevant.

A study of changes in Arctic and Antarctic sea ice yields very different inferences. Since 1979, Arctic sea ice has declined relative to the 30-year average (again, the degree to which this is the result of anthropogenic factors is not known). Meanwhile, Antarctic sea ice has been growing relative to the 30-year average, and the global sea-ice total has remained roughly constant since 1979.

Extreme weather occurrences are likewise used as evidence of an ongoing climate crisis, but again, a study of the available data undercuts that assessment. U.S. tornado activity shows either no increase or a downward trend since 1954. Data on tropical storms, hurricanes, and accumulated cyclone energy (a wind-speed index measuring the overall strength of a given hurricane season) reveal little change since satellite measurements of the phenomena began in the early 1970s. The number of wildfires in the United States shows no upward trend since 1985, and global acreage burned has declined over past decades. The Palmer Drought Severity Index shows no trend since 1895. And the IPCC's Fifth Assessment Report, published in 2014, displays substantial divergence between its discussion of the historical evidence on droughts and the projections on future droughts yielded by its climate models. Simply put, the available data do not support the ubiquitous assertions about the causal link between greenhouse-gas accumulation, temperature change, and extreme weather events and conditions.

Unable to demonstrate that observed climate trends are due to anthropogenic climate change — or even that these events are particularly unusual or concerning — climate catastrophists will often turn to dire predictions about prospective climate phenomena. The problem with such predictions is that they are almost always generated by climate models driven by highly complex sets of assumptions about which there is significant dispute. Worse, these models are notorious for failing to accurately predict already documented changes in climate. As climatologist Patrick Michaels of the Competitive Enterprise Institute notes:

During all periods from 10 years (2006-2015) to 65 (1951-2015) years in length, the observed temperature trend lies in the lower half of the collection of climate model simulations, and for several periods it lies very close (or even below) the 2.5th percentile of all the model runs. Over shorter periods, such as the last two decades, a plethora of mechanisms have been put forth to explain the observed/modeled divergence, but none do so completely and many of the explanations are inconsistent with each other.

Similarly, climatologist John Christy of the University of Alabama in Huntsville observes that almost all of the 102 climate models incorporated into the Coupled Model Intercomparison Project (CMIP) — a tracking effort conducted by the Lawrence Livermore National Laboratory — overstate past and current temperature trends by a factor of two to three, and at times even more. It seems axiomatic to say we should not rely on climate models that are unable to predict the past or the present to make predictions about the distant future.

The overall temperature trend is not the only parameter the models predict poorly. As an example, every CMIP climate model predicts that increases in atmospheric concentrations of greenhouse gas should create an enhanced heating effect in the mid-troposphere over the tropics — that is, at an altitude over the tropics of about 30,000-40,000 feet. The underlying climatology is simple: Most of the tropics is ocean, and as increases in greenhouse-gas concentrations warm the Earth slightly, there should be an increase in the evaporation of ocean water in this region. When the water vapor rises into the mid-troposphere, it condenses, releasing heat. And yet the satellites cannot find this heating effect — a reality suggesting that our understanding of climate and atmospheric phenomena is not as robust as many seem to assume.

The poor predictive record of mainstream climate models is exacerbated by the tendency of the IPCC and U.S. government agencies to assume highly unrealistic future increases in greenhouse-gas concentrations. The IPCC's 2014 Fifth Assessment Report, for example, uses four alternative "representative concentration pathways" to outline scenarios of increased greenhouse-gas concentrations yielding anthropogenic warming. These scenarios are known as RCP2.6, RCP4.5, RCP6, and RCP8.5. Since 1950, the average annual increase in greenhouse-gas concentrations has been about 1.6 parts per million. The average annual increase from 1985 to 2019 was about 1.9 parts per million, and from 2000 to 2019, it was about 2.2 parts per million. The largest increase that occurred was about 3.4 parts per million in 2016. But the assumed average annual increases in greenhouse-gas concentrations through 2100 under the four RCPs are 1.1, 3.0, 5.5, and an astounding 11.9 parts per million, respectively.

The studies generating the most alarmist predictions are the IPCC's Special Report on Global Warming of 1.5°C and the U.S. government's Fourth National Climate Assessment, both of which were published in 2018. Both assume RCP8.5 as the scenario most relevant for policy planning. The average annual greenhouse-gas increase under RCP8.5 is over five times the annual average for 2000-2019 and almost four times the single biggest increase on record. Climatologist Judith Curry, formerly of the Georgia Institute of Technology, describes such a scenario as "borderline impossible."

RCP6 is certainly more realistic. It predicts a temperature increase of 3 degrees Celsius by 2100 in the average of the CMIP models. But on average, those CMIP models overstate the documented temperature record by a factor of at least two. Ultimately, models with a poor record of successfully accounting for past data and highly unrealistic future greenhouse-gas concentrations should not be considered a reasonable basis for future policy formulation.

#### Their Hendy ev is about ag runoff generally as a result of all farming, they only affect industrial ag.

#### Farmers are reducing ferilizers now

\*the article is written in response to Dan O’Neil, Leeds U

Bailey 18 (Ronald, science correspondent for Reason, view full qualifications here: <https://reason.com/people/ronald-bailey/>, “Is Degrowth the Only Way to Save the World?”, 2/16/18, <https://reason.com/2018/02/16/is-degrowth-the-only-way-to-save-the-wor/)//NRG>

O'Neill and his colleagues are also concerned that farmers are using too much nitrogen fertilizer, which runs off fields into the natural environment and contributes to deoxygenated dead zones in the oceans, among other ill effects. This is a problem, but one that plant breeders are already working to solve. For example, researchers at Arcadia Biosciences have used biotechnology to create nitrogen-efficient varieties of staples like rice and wheat that enable farmers to increase yields while significantly reducing fertilizer use. Meanwhile, other researchers are moving on projects to engineer the nitrogen fixation trait from legumes into cereal crops. In other words, the crops would make their own fertilizer from air.

#### Dead zones aren’t anthropogenic—newest studies

Gupta et al. 21, (4-16-2021, Dr. G. V.M. Gupta, specialized in Marine Biogeochemistry, Director of CENTRE FOR MARINE LIVING RESOURCES & ECOLOGY. Dr. Gupta did his M. Sc in Chemical Oceanography from Andhra University, Visakhapatnam in 1992. He joined National Institute of Oceanography, Visakhapatnam as Junior Research Fellow under the project Coastal Ocean Monitoring and Predictive Systems (COMAPS) and worked on the estuarine/coastal pollution and biogeochemistry of the Bay of Bengal through extensive field surveys. He received his Ph. D from Andhra University in 1999 for his work on Particulate Matter Composition in the Bay of Bengal. He worked as an Environmental Manager in Baroda for one year before joining Integrated Coastal and Marine Area Management - Project Directorate (ICMAM-PD), Chennai as Scientist in 1999., R Jyothibabu, Ch V Ramu, A Yudhistir Reddy, K K Balachandran, V Sudheesh, Sanjeev Kumar, N V H K Chari, Kausar F Bepari, Prachi H Marathe, B Bikram Reddy and Anil Kumar Vijayan. "The world's largest coastal deoxygenation zone is not anthropogenically driven", Environmental Research Letters is a quarterly, peer-reviewed, open-access, scientific journal covering research on all aspects of environmental science. It is published by IOP Publishing, https://iopscience.iop.org/article/10.1088/1748-9326/abe9eb ) //BW

Terrestrial inputs can also contribute to the formation of coastal deoxygenation but the recently emerged evidences suggest that this could not be the only cause. Unlike the major and perennial rivers that flow along the east coast of India into the Bay of Bengal, only small to medium rivers flow along the west coast of India discharging ~76% less freshwater laden with nutrients into the Arabian Sea (Krishna et al 2016). Much of these discharges are confined to a shorter period of about four months coinciding with the SM, with peak discharges in July–August when >80% of runoff occurs that dilute the nutrient load. Though India is the second-largest fertilizer consuming country in the world, transport of nutrients to the coastal sea will be heavily constrained by their highest retention in these monsoonal rivers (~91%; Krishna et al 2016) compared to those in the North America and western Europe (74%; Alexander et al 2002, Boyer et al 2002), and global watershed (80%; Caraco and Cole 1999). This is reflected in the stable isotopic composition of suspended organic matter over the central-western shelf of India which did not reveal significant anthropogenic contribution (Maya et al 2011). Even the minor fraction of nutrients that escape into the coastal sea may not be fully utilized by coastal phytoplankton since rivers also discharge significant amounts of suspended sediments which along with overcast skies during the SM limit the primary production. Besides, it has been shown recently that hypoxic to anoxic waters exist over the south-western shelf of India (Gupta et al 2016, Sudheesh et al 2016, 2020) where no major rivers exist and the degree of coastal deoxygenation remain stable despite the hinterland experienced large-scale developmental activities in the last five decades (Gupta et al 2016). Collectively, these recent studies are suggestive of yet another process, besides that of anthropogenic origin, being chiefly responsible for the observed seasonal deoxygenation over the west coast of India. Nevertheless, the seasonal acute oxygen deficiency along the west coast of India is recurrently happening possibly by both natural and anthropogenic sources but with unknown relative importance. Using the systematic oceanographic Eastern Arabian Sea (EAS) basin-scale data collected from 7 to 10 transects running from estuaries through coastal to offshore regions during different phases of the SM of 2018 (figure 1), we prove that the influence of terrestrial inputs is meagre while the oceanic factors largely drive the development of hypoxia/anoxia along the west coast of India. Apart, we also have focused on the spatio-temporal variation in upwelling and its linkage between dissolved oxygen concentrations of the OMZ and development of anoxia confined only to the central shelf during the progression of SM, which are hitherto unknown. 2. Study area The circulation in the EAS during the SM is characterised by an equator-ward West India Coastal Current (WICC), a poleward West India Under Current (WIUC) and the phenomenon of coastal upwelling (Shetye et al 1990). While this phase of WICC carries Arabian Sea High Salinity Watermass (ASHSW) from the north, the WIUC carries relatively ventilated waters towards the north (Naqvi et al 2006). The upwelling is supported by favourable winds/currents and propagates from south to north with time (Johannessen et al 1987), but its intensity weakens towards the north. These upwelling waters are sourced from the perennial OMZ (Banse et al 2014) and promote the development of deoxygenation over its shelf. Among the estuaries discharging along the west coast of India (figure 1), the Kochi estuary in the south and Amba and Thane estuaries in the north are highly eutrophic compared to those in the central region, viz. Nethravati, Mandovi and Zuari, as the latter are less affected by the developmental activities. 3. Materials and methods We made EAS basin-scale cruises during the three phases of SM viz. early SM (4 June to 9 July), peak SM (3 August to 6 September) and late SM (16 September to 8 October) of 2018 onboard FORV Sagar Sampada and ORV Sagar Kanya. Each cruise covered about 70–90 stations from 7 to 10 coast-offshore transects along the entire EAS (figure 1). Each transect was occupied between 30 and 2000 m depth contours, and additionally, very shallow stations (13 and/or 20 m) were occupied at Kochi, Mangalore, Goa, Mumbai, and Okha. Parallelly, seven main estuaries (downstream regions towards mouth) along the western India (figure 1), debouching adjoining our cruise transects, were studied twice during early SM (June) and late SM (September). The temperature and salinity profiles were recorded using a new Conductivity-Temperature-Depth (CTD) profiler (SBE 11 Plus, Sea-Bird, USA for cruises and SBE 25 for estuaries). Samples were collected from Niskin bottles attached to CTD rosette (cruises) and manually (estuaries). Samples for dissolved oxygen were collected in 125 ml glass bottles, fixed by adding 1 ml of Winkler A (with Azide to remove nitrite interference) and Winkler B, and titrated against 0.001 N sodium thiosulphate potentiometrically (907 Titrando, Metrohm, Switzerland) (Carritt and Carpenter 1966). The small amount of oxygen carried by the reagents was not subtracted, and oxygen was estimated with a precision of ±0.15 µM. The new dissolved oxygen sensor (SBE 43, Sea-Bird) attached to CTD was maintained wet and rinsed regularly with 0.1% Triton X-100 followed by a rinse with fresh water. The oxygen sensor data, well correlated against the measured values (n = 1062; p< 0.001) across the water column, was used in this study. Apparent oxygen utilisation was calculated according to Garcia and Gordon (1992). Samples for nutrients, filtered through Whatman GF/F and preserved with saturated mercuric chloride (0.5% v/v), were analysed using an autoanalyser (Skalar San++) following standard methods (Grasshoff et al 1999), except nitrate which was analysed following the method of García-Robledo et al (2014). Ammonium was measured spectrophotometrically (Grasshoff et al 1999). The precisions of nitrate, nitrite, ammonium, and phosphate were ±0.01, ±0.03, ±0.1 and ±0.01 µM, respectively. For particulate organic matter, 4–6 l of seawater was filtered through 47 mm Whatman GF/F filters (precombusted at 400 °C for 4 h) and preserved at −40 °C. The overnight oven-dried filters for carbon were decarbonated with HCl fumes, whereas nitrogen isotopic composition was measured from untreated filters. Carbon and nitrogen isotopic composition in these filters were analysed using an isotope ratio mass spectrometer attached to an elemental analyser (Thermo Flash 2000 + Delta V) with a precision of <0.1‰ and <0.3‰, respectively. Dissolved organic carbon and nitrogen in the filtrates were analysed using a TOC-TN analyser (Shimadzu) with an accuracy of ±1%. Chlorophyll a in the seawater (2–3 l filtered onto 25 mm Whatman GF/F filters in dark and stored at −80 °C) was extracted in 100% methanol and analysed using high performance liquid chromatography (Shimadzu Prominence) (Roy et al 2015). 4. Results and discussion 4.1. Significance of anthropogenic effect on coastal deoxygenation Temporal changes between early, peak and late phases of the SM upwelling showed two significant features (figure 1): the gradual intensification of shelf oxygen deficiency from hypoxic during early SM to suboxic/anoxic by late SM and the other, a gradient in it, with the suboxia/anoxia (≤5 µM) confined to the central shelf between 11º and 18º N, and hypoxia prevailing to the north and south of it. This reflects that almost half of the western Indian shelf in the central region is under acute stress. There are several factors that appear to unrelate the development of this coastal anoxia to the anthropogenic effect. First, the anoxic central zone is located away from receiving significant anthropogenic inputs unlike in the coastal waters off Kochi (10º N) in the south and Mumbai (19º N) in the north, the two largest coastal cities of west India, which receive substantial allochthonous inputs, yet remained at hypoxia during entire SM. The increased anthropogenic activities have not impaired these coastal waters (Balachandran 2001) as evident from their decadal changes. The Kochi estuary has been transformed from an autotrophic to a highly heterotrophic system between 1965 and 2005 (Gupta et al 2009) due to a 4–6 fold rise in anthropogenic nutrients (Martin et al 2010). Yet, its SM coastal hypoxia remains unchanged during this period (Gupta et al 2016) because the fast turnover rates of nitrogen within the flushing times of the estuary (Bhavya et al 2016) limits its export impact to the nearshore regions only (Gupta et al 2016, Bhavya et al 2017, 2018). This is also true with other monsoonal estuaries of west India which are acting as heavy sink zones and export only <10% of anthropogenic nutrients to the coastal sea (Krishna et al 2016). Second, nutrient concentrations in the lower reaches of seven main estuaries along the west coast during early and late phases of SM showed more than two-fold lower concentrations in the estuaries of the central region, where coastal anoxia is confined, than those in the northern and southern regions (figure 2). Though not measured, the estuarine nutrients during peak SM can contribute to coastal deoxygenation. But the high nearshore surface salinity (upper 4 m) at the central shelf (Mangalore and Goa) during peak SM (34.27–35.36) compared to that of Kochi (24.26) shows weak runoff over the former shelf (figure 3), still, it maintained with nitrate replete (9.5–13 µM) and anoxic conditions (figure 1). Third, we examined the data on the stable isotopic composition of particulate organic carbon (POC) and nitrogen (PN) during the SM (figure 3). High δ15NPN (15.8 ± 1.6‰) and low δ13CPOC (−31.5 ± 1‰) were found in the sewage from a coastal outfall at Mumbai (Sarma et al 2019). These δ15NPN are distinctly higher than our measured values at nearshore regions of Kochi (7.7‰–7.8‰) and the rest of the west coast (8‰–13‰) including those reported off Goa earlier (7.77 ± 1.57‰; Maya et al 2011), indicating an absence of anthropogenic influence due to intense mixing and rapid dilution of these waters once enter the coastal sea. Similarly, except nearshore waters of Kochi during late SM (−15.3‰), the δ13CPOC from rest of the coast, including the anoxic central zone (−20‰ to −25.5‰) and off Goa (−19.0 ± 0.67‰; Maya et al 2011), largely fell in the range reported for organic matter of marine origin (−18‰ to −24 ‰; Cloern et al 2002, Bouillon et al 2003). Since the nearshore waters of Kochi show high δ13CPOC with high salinity during late SM, it precludes the possibility of significant terrestrial influence as it is quite close to the values observed for sea grass or macroalgae (−16‰ to −19‰; Hondula and Pace 2014). Notably, δ13CPOC (−21.7‰ to −22.2‰) during the maximum runoff conditions at Kochi nearshore during peak SM (salinity 24.26–28.1) also did not deviate significantly from the typical marine signature, when it maintained with bottom hypoxia (17–31 µM). These are in accordance with the last three decadal regular monitoring of coastal waters around India, which shows that the coastal waters within ~2 km from the vicinity of population centres, especially mega cities like Kochi and Mumbai, only felt with significant anthropogenic effect (Madeswaran et al 2018) due to their rapid dilution beyond this distance. Thus the observed weak or no anthropogenic signal even at the nearshore stations (8–13 km away from the coast) along the EAS is consistent with no terrestrial nutrients influence beyond ~15 km from the coast in the Bay of Bengal (Sarma et al 2020b). Overall the isotopic data in conjunction with salinity during the study period (figure 3) suggests that the nutrient source of organic matter to the anoxic central zone is likely of marine origin. Higher δ15NPN in the central region (>9‰) compared to Kochi (7.1‰–7.8‰), despite salinity at the former region was higher than the latter, suggest the isotopically enriched source of nitrogen during the formation of organic matter as these values are higher than typical δ15N for phytoplankton in marine waters (Kumar et al 2004). The enriched source of nitrogen for these waters could be sewage (15.8 ± 1.6‰; Sarma et al 2019) or denitrified upwelling (9‰–12‰; Rixen et al 2014) or sediment pore water. However, no significant drop in salinity at these locations indicates the limited contribution of freshwater mediated waste supply. Therefore, it is highly likely that the source of nutrients for the formation of organic matter at these locations is marine-derived natural processes. Moreover, even during peak SM, when significant freshwater was received at Kochi nearshore (surface salinity ~24), no significant increase in δ15NPN was observed implying rapid dilution of terrestrial inputs within few kilometres from the coast. Similar is the case with Mangalore where the low salinity front observed between stations 3 and 4 during peak SM shows δ15NPN of denitrified marine signals (figure 3). To further confirm the possible influence of anthropogenic sources on coastal anoxia, paleoceanographic records are examined. Organic carbon isotopic composition and variability in iron content in the sediment core were taken as proxies for the source of carbon and redox conditions in the water column, respectively. The sediment cores from the shallow stations of the central west coast of India, dated to ~350 years, were found to have a narrowly varied isotopic composition of organic carbon (−23‰ to −21‰) indicating its marine origin (Fernandes et al 2020). The authigenic iron contents in these cores also did not show significant variability between the recent and past centuries. Similarly, almost uniform Fe/Al (0.78 ± 0.04) and Mg/Al (0.32 ± 0.02) ratios in the sediment core in the last ~700 years infer no considerable change in nature and source of detritus (Agnihotri et al 2008). Dinoflagellate cysts are good indicators of ecosystem eutrophication by anthropogenic factors (Price et al 2018), and their tracking history in the sediment core from the west coast of India also did not indicate any sign of terrigenous derived organic matter (D'Silva et al 2012). Unlike the coastal systems of the Gulf of Mexico, Gulf of St. Lawrence, etc where paleo records show a significant impact of anthropogenically derived eutrophication (Rabalais et al 2007, Gilbert et al 2010, Price et al 2018), the studies on coastal system of west India have not shown such effect. These findings along with our earlier observation of unchanged hypoxic conditions compared to five decades ago over the southwest coast of India corroborate the view that the coastal deoxygenation is supported by the oceanic processes (Gupta et al 2016). All these observations collectively strengthen the possibility that the anoxic conditions along the central west coast are not primarily related to the anthropogenic effect. 4.2. Influence of circulation on the variation of OMZ and its expansion onto the coast It is known that the upwelling waters of the EAS originate from the Arabian Sea OMZ (Banse 1959), however, it is unknown till now the depth and dissolved oxygen concentrations of source waters for the upwelling. Our results show that the extent of shelf deoxygenation follows the corresponding spatio-temporal changes in the distribution of dissolved oxygen concentrations in the offshore OMZ. To begin with, the upwelling of deoxygenated waters initiated in the south is progressed up to 15° N by early SM, and to the entire west coast by peak SM (figure 1). While doing so, the shelf exhibited significant deoxygenation gradients with anoxia confined to the central shelf between 11° and 18° N. The upper boundary of OMZ (20 µM oxygen), varied between ~100 m in the south to ~130 m in the north during early SM, shallows with the progression of the season to a peak to ~70 m in the central region by late SM (figure 4), and accordingly forms the source for upwelling (figure 5). Further, the perennial OMZ has a southern boundary at ~12° N (Naqvi 1991), its 0.2 ml l−1 (~9 µM) dissolved oxygen isoline slopes northward up to 18° N (figure 1). These lead to a condition wherein the upwelling waters over the central shelf are sourced from the core OMZ which are suboxic (≤10 µM) while those of the south and north are from hypoxic waters (~20 µM) outside the core OMZ (figure 4). These core OMZ denitrified waters have enriched δ15NPN of 9‰–12‰ at 100–150 m (Rixen et al 2014), the upwelling of these waters contributed to higher δ15NPN over the central shelf (>9‰), consistent with the values reported earlier (Maya et al 2011), compared to the southern shelf (<8‰) (figure 3). Though the upwelling propagates from south to north, its onset in the south is evident at 100 m during January–February, peaks to the surface layers during the SM (June–August), and subsides abruptly thereafter (Gupta et al 2016). However, the present intra-seasonal data shows that while progressing to the north, the peak phase of upwelling over the southern and northern shelves end up at hypoxia while the upwelling over the central shelf is sustained till late SM but with suboxia/anoxia (figure 6). These changes in the coastal waters are also accompanied by similar changes in the offshore waters. The doming of the water column seen at 10° N during early SM shallows and strengthens in size up to 11° N by peak SM, and thereafter shifts to 14° N by late SM (figure 4). This shift, as shown by the weekly averaged satellite data on sea surface height anomalies, is governed by the formation of cold-core eddies in the south and central regions respectively during peak and late SM (figure 7). This leads to a shift in the upliftment of the water column/oxycline from outside core OMZ to within core OMZ during the progression of SM. Consequently, the core OMZ waters of the central region shoal from >100 m to ~70 m between early and late SM, the corresponding change in oxygen regime in upwelling source waters from hypoxia to suboxia (figure 4) influences the intensification of deoxygenation over the central shelf (figures 5, 6 and 8). Such spatial and temporal shifting of cyclonic eddies, influencing the intensity and spatial spread of upwelling and, in turn, the patterns of distribution of dissolved oxygen over the shelf, as seen from the sea surface height anomalies from 2012 to 2017 (figures S1 and S2 (available online at stacks.iop.org/ERL/16/054009/mmedia)), is probably a recurrent feature. The poleward west India under-currents at 50–150 m, gain strength between peak and late SM, carry relatively ventilated waters (Naqvi et al 2006) up to 11–12° N (figures 4 and S3). Their progression also restricts the upwelling of suboxic (<10 µM) core OMZ waters to the north of 11° N and governs the southern boundary of shelf anoxia (figures 1 and 5). The equatorward advection of Arabian Sea High Salinity Watermass (ASHSW >36) with WICC also has a role in maintaining the oxygen gradients between the north and central regions. The oxygenated ASHSW is about 150 m thick in the north and caps the cold (20 °C) and hypoxic (~20 µM) waters (figure 4). The upwelling of these relatively aerated waters over the shelf north of 19° N maintains its hypoxic conditions (figures 5 and 8). But between 18° and 12° N, the ASHSW is gradually eroded to <70 m, enabling an intense upwelling of suboxic waters on to the central shelf. However, the ASHSW still acts as a barrier for upward movement of anoxic layers along the central west coast. Though coastal anoxia is confined to 11–18° N, north of 15° N (for example, off Goa—figure 8) where the pycnocline is thicker, it is less-spread whereas the shallow pycnocline south of 15° N leads to large parts of the water column becoming anoxic, thereby the severity of anoxic volume is higher at Mangalore than at Goa. 4.3. Influence of shelf biogeochemistry and biology on deoxygenation Though physical factors govern the spread of deoxygenated upwelling waters, shelf biogeochemistry and biology also play a crucial role in maintaining the observed gradients. In phase with the decreasing upwelling intensity towards the north, the phytoplankton biomass (column chlorophyll a) between the nearshore and mid-shelf regions during the SM months was higher in the south (77 ± 47 mg m−2) compared to the central (56 ± 26 mg m−2) and northern (56 ± 23 mg m−2) regions. But the corresponding bottom oxygen consumption rates (based on changes in apparent oxygen utilisation), following the decay of plankton, remained relatively higher in the central (1.91 ± 0.8 µM l−1 d−1) than in the southern (1.59 ± 0.6 µM l−1 d−1) and the northern (1.68 ± 0.4 µM l−1 d−1) regions. As the abundance of zooplankton and herbivorous fishes in the suboxic/anoxic (hypoxic) waters of the central (southern) shelf are expected to be lower (higher) (Stramma et al 2011, Gupta et al 2016, Roman et al 2019), the lower grazing loss of phytoplankton in the central shelf results in higher decomposition of sinking organic matter (figure S4) and intensifies oxygen depletion. 5. Conclusions This study clearly shows that the development of seasonal anoxia over the central-western shelf of India is a natural phenomenon caused by the upwelling of core OMZ waters, to which upwelling driven biogeochemical processes add. The incidence and spread of this coastal anoxic zone may vary depending on the interannual variation in the intensity of SM, which in turn is influenced by climatic events. For example, the weak upwelling during El Niño-Southern Oscillation (ENSO) years has led to the incursion of relatively oxygenated waters and no or weak coastal anoxia was formed (figure S5). Even model studies have found prevention of anoxia formation during Indian Ocean Dipole (IOD) years over the west coast of India (Parvathi et al 2017), which also supports our argument of it being driven naturally. The observed weak cyclonic eddies during the IOD (2012) and ENSO (2014–2015) years relative to normal years (figures S1 and S2) also support this. Similarly, the ENSO years of weak winter cooling (Chakraborty et al 2017) can alternately weaken the strength of ASHSW and influence the upwelling intensity. The fact that equatorward spread of ASHSW through WICC interacting with upwelling influences the spatio-temporal variation of oxycline depth is a significant finding as larger the anoxic volume greater the reduction in habitat for higher pelagic organisms, which in turn, alters the trophic food web dynamics (Diaz and Rosenberg 2008, Stramma et al 2011). This is especially true during late SM when fresh water laden salinity stratification (oxic zone) is sharply retreating and upwelling driven anoxic volume is proportionately increasing it leads to a scenario of pelagic fishes gets trapped into the rapidly shrinking habitable oxic volume towards the coast and washed ashore over the central coast (at Goa beach, see figure 2.3.12 of Naqvi 2019). Similar fish mortality were also happening in the regions of sharp hypoxic-anoxic boarders such as one that happened at ~11–12° N during late SM 2019 (figure S6). Nevertheless, the present study, pointing out the natural origin of the world's largest coastal anoxia over the central west coast of India as an example, may infer that not all the

#### Phosphorus sustainable – AND, new tech solves

\*the article is written in response to Dan O’Neil, Leeds U

Bailey 18 (Ronald, science correspondent for Reason, view full qualifications here: <https://reason.com/people/ronald-bailey/>, “Is Degrowth the Only Way to Save the World?”, 2/16/18, <https://reason.com/2018/02/16/is-degrowth-the-only-way-to-save-the-wor/)//NRG>

Are we about to run out of phosphorous to fertilize our crops? Peak phosphorus is not at hand. The U.S. Geological Survey (USGS) reports that at current rates of mining, the world's known reserves will last 266 years. The estimated total resources of phosphate rock would last over 1,140 years. "There are no imminent shortages of phosphate rock," notes the USGS. With respect to the deleterious effects that using phosphorus to fertilize crops might have outside of farm fields, researchers are working on ways to endow crops with traits that enable them to use less while maintaining yields.

#### No impact to bio-d loss

Kareiva 12 (Peter Kareiva et. al, – Chief Scientist and Vice President of the Nature Conservancy, Michelle Marvier, Robert Lalasz, “Conservation in the Anthropocene Beyond Solitude and Fragility”, The Breakthrough, http://thebreakthrough.org/index.php/journal/past-issues/issue-2/conservation-in-the-anthropocene/)

2.

As conservation became a global enterprise in the 1970s and 1980s, the movement's justification for saving nature shifted from spiritual and aesthetic values to focus on biodiversity. Nature was described as primeval, fragile, and at risk of collapse from too much human use and abuse. And indeed, there are consequences when humans convert landscapes for mining, logging, intensive agriculture, and urban development and when key species or ecosystems are lost.

But ecologists and conservationists have grossly overstated the fragility of nature, frequently arguing that once an ecosystem is altered, it is gone forever. Some ecologists suggest that if a single species is lost, a whole ecosystem will be in danger of collapse, and that if too much biodiversity is lost, spaceship Earth will start to come apart. Everything, from the expansion of agriculture to rainforest destruction to changing waterways, has been painted as a threat to the delicate inner-workings of our planetary ecosystem.

The fragility trope dates back, at least, to Rachel Carson, who wrote plaintively in Silent Spring of the delicate web of life and warned that perturbing the intricate balance of nature could have disastrous consequences.22 Al Gore made a similar argument in his 1992 book, Earth in the Balance.23 And the 2005 Millennium Ecosystem Assessment warned darkly that, while the expansion of agriculture and other forms of development have been overwhelmingly positive for the world's poor, ecosystem degradation was simultaneously putting systems in jeopardy of collapse.24

The trouble for conservation is that the data simply do not support the idea of a fragile nature at risk of collapse. Ecologists now know that the disappearance of one species **does not** necessarily lead to the extinction of any others, much less all others in the same ecosystem. In many circumstances, the demise of formerly abundant species can be inconsequential to ecosystem function. The American chestnut, once a dominant tree in eastern North America, has been extinguished by a foreign disease, yet the forest ecosystem is surprisingly unaffected. The passenger pigeon, once so abundant that its flocks darkened the sky, went extinct, along with countless other species from the Steller's sea cow to the dodo, with no catastrophic or even measurable effects.

These stories of resilience are not isolated examples -- a thorough review of the scientific literature identified 240 studies of ecosystems following major disturbances such as deforestation, mining, oil spills, and other types  of pollution. The abundance of plant and animal species as well as other measures of ecosystem function recovered, at least partially, in 173 (72 percent) of these studies.25

While global forest cover is continuing to decline, it is rising in the Northern Hemisphere, where "nature" is returning to former agricultural lands.26 Something similar is likely to occur in the Southern Hemisphere, after poor countries achieve a similar level of economic development. A 2010 report concluded that rainforests that have grown back over abandoned agricultural land had 40 to 70 percent of the species of the original forests.27 Even Indonesian orangutans, which were widely thought to be able to survive only in pristine forests, have been found in surprising numbers in oil palm plantations and degraded lands.28

Nature is so resilient that it can recover rapidly from even the most powerful human disturbances. Around the Chernobyl nuclear facility, which melted down in 1986, wildlife is thriving, despite the high levels of radiation.29 In the Bikini Atoll, the site of multiple nuclear bomb tests, including the 1954 hydrogen bomb test that boiled the water in the area, the number of coral species has actually increased relative to before the explosions.30 More recently, the massive 2010 oil spill in the Gulf of Mexico was degraded and consumed by bacteria at a remarkably fast rate.31

Today, coyotes roam downtown Chicago, and peregrine falcons astonish San Franciscans as they sweep down skyscraper canyons to pick off pigeons for their next meal. As we destroy habitats, we create new ones: in the southwestern United States a rare and federally listed salamander species seems specialized to live in cattle tanks -- to date, it has been found in no other habitat.32 Books have been written about the collapse of cod in the Georges Bank, yet recent trawl data show the biomass of cod has recovered to precollapse levels.33 It's doubtful that books will be written about this cod recovery since it does not play well  to an audience somehow addicted to stories of collapse and environmental apocalypse.

Even that classic symbol of fragility -- the polar bear, seemingly stranded on a melting ice block -- may have a good chance of surviving global warming if the changing environment continues to increase the populations and northern ranges of harbor seals and harp seals. Polar bears evolved from brown bears 200,000 years ago during a cooling period in Earth's history, developing a highly specialized carnivorous diet focused on seals. Thus, the fate of polar bears depends on two opposing trends -- the decline of sea ice and the potential increase of energy-rich prey. The history of life on Earth is of species evolving to take advantage of new environments only to be at risk when the environment changes again.

The wilderness ideal presupposes that there are parts of the world untouched by humankind, but today it is impossible to find a place on Earth that is unmarked by human activity. The truth is humans have been impacting their natural environment for centuries. The wilderness so beloved by conservationists -- places "untrammeled by man"34 -- never existed, at least not in the last thousand years, and arguably even longer.

### 1nc – china

#### No modeling --- they match US policy because its efficient --- no ev they would model if we MOVE AWAY

#### Long time frame --- if theres a food crises plan cant spill up fast enough to solve

#### Non-unique and alt cause --- China does small farming now but alt causes

Sleet 20 --- Phoebe Sleet, Research Analyst, Global Food and Water Crises Research Programme, “Can China Increase Food Quality while Maintaining Food Production?”, 5 FEBRUARY 2020, https://www.futuredirections.org.au/publication/can-china-increase-food-quality-while-maintaining-food-production/

With 1.4 billion people to feed and only 135 million hectares of arable land (most of which is cultivated by small-scale farmers), maintaining China’s food security has always been a momentous task. Making the task even more complex, are a myriad of challenges and difficulties that Chinese agriculture currently faces.

Contaminated soil, for instance, threatens China’s food security and, in some cases, public health. Reports indicate that over 40 per cent of China’s soil is degraded, reducing crop yields. Land classified as degraded includes land displaying reduced fertility, erosion, acidification or damage from pollutants. In China, such pollutants can include organic and inorganic chemical pollutants, as well as heavy metals, such as lead, cadmium and arsenic. According to official estimates, each year in China 12 million tons of grain contaminated with heavy metals is produced and 10 billion kilograms of food is lost, as a result of pollution. More than three million hectares of land have also been declared too polluted to farm.

Food safety scandals are also alarmingly common. While the Chinese Government has made numerous efforts to combat the problem, including strict monitoring and punishments, food scandals have continued to emerge. That is partly because of the vast scale and complexity of China’s food system, which consists of around 450,000 food production companies, the majority of which have fewer than ten employees.

#### Land use alt cause

Sleet 20 --- Phoebe Sleet, Research Analyst, Global Food and Water Crises Research Programme, “Can China Increase Food Quality while Maintaining Food Production?”, 5 FEBRUARY 2020, https://www.futuredirections.org.au/publication/can-china-increase-food-quality-while-maintaining-food-production/

Other issues also plague China’s agricultural system. In 2007, China announced it would aim to maintain 120 million hectares of arable land. Local governments are able to bypass these requirements, however, by including marginal areas as arable or by reclassifying urban areas as farms. Meanwhile, China lost arable land between 2013 and 2017 as a result of new construction, natural disasters and agricultural production changes. Water shortages have also been driven by increasing urbanisation and industrialisation and the current irrigation system is inefficient. A further complication is that the majority of China’s cropland is found in the north of the country, which only possesses one-fifth of the country’s water resources.

#### Alt cause to Xi – Hong Kong, trade war, food scarcity, COVID

Deng 19 [Dean Cheng is the Heritage Foundation's research fellow on Chinese political and security affairs. 7-19-2019 https://www.newsweek.com/hong-kong-tiananmen-taiwan-1450231]

Xi Jinping's Worries

This is not to say that Xi Jinping will necessarily have infinite patience, however. For Xi, Hong Kong represents an additional burden in a time of troubles. Responding as Deng and Li Peng did thirty years ago will tar his reputation, even as he will remain in power for an extended time, having eliminated term limits on his role as Chinese president.

Xi also wishes to resolve the situation promptly. As the trade war drags on, Chinese factories, and workers, are likely to suffer economic hits. The spread of African swine flu and fall armyworm will affect food prices. Protests in Wuhan over a new incinerator plant are a reminder of other chronic problems that undermine the Chinese Communist Party's image. For Hong Kong, with its massive Western media presence, to have constant protests can only add to Xi's headaches.

A desire for a rapid resolution may not lead to a peaceful one, however. Xi likely wants to demonstrate that it is he, not Hong Kong, that determines the fate of the Special Administration Region. This will become more pressing as the current protests now include not only students but workers, shop-keepers, and mothers. If a broad cross-section of Hong Kong moves to oppose him, maintaining control could become more difficult. The use of violence in some of the most recent protests, including the storming of the Legislative Council's offices, unfortunately provides Xi with an excuse to suppress the protests, possibly forcefully.

#### Xi resilient

Torigian 19 [Joseph Torigian, Assistant Professor - American University School of International Service - “Elite politics and foreign policy in China from Mao to Xi” – Brookings - January 22, 2019 - #E&F - https://www.brookings.edu/articles/elite-politics-and-foreign-policy-in-china-from-mao-to-xi/]

In the summer of 2018, outside observers drew upon rumors in Beijing and a series of curious events to raise the possibility that a trade war between China and the United States had diminished Xi Jinping’s authority. These developments once again posed the question of how to think about the relationship between elite politics and foreign policy in China. Partly because good information is so sparse, analysts regularly look to Mao Zedong and Deng Xiaoping to provide context.

What we now know about recent Chinese history suggests that not only Mao, but, as opposed to a viewpoint commonly expressed among China watchers and especially the media, also Deng were exceptionally powerful leaders largely unrestrained by institutions and opposing “factions.” This state of affairs meant that foreign policy decisionmaking was essentially firewalled from questions of political authority—no one thought about punishing the top leader for their policy toward the outside world. The historical record is also interesting for how rarely the leadership had serious differences of opinion on external relations.

Although elite politics in China today remain opaque, Xi shares many of the strengths of his predecessors, as well as one or two unique to him, which means we have reason to believe Xi has significant leeway to determine China’s foreign policy. Yet Xi lacks critical advantages held by Mao and Deng. Unlike his predecessors, a very slight possibility does exist that foreign policy failures would impact Xi’s authority—but only as part of an unlikely series of events and in conjunction with other factors.

#### No Xi diversionary war – easier to address domestic issue, fear a loss, not supported by CCP elites

Yin 19 [George Yin - holds a B.A. in political science and economics from Swarthmore, a MSc in political economy from the London School of Economics, and a Ph.D. in government from Harvard. Currently, Yin is a Fellow in U.S. Foreign Policy and International Security at Dartmouth College and is a member of The Fairbanks Center of Chines Studies at Harvard. The Center’s mission is to advance scholarship in all fields of China Studies. There, Yin’s scholarship focuses on International relations theory and international security, with a strong interest in Chinese politics. - “Domestic repression and international aggression? Why Xi is uninterested in diversionary conflict” – Brookings - January 22, 2019 - #E&F - https://www.brookings.edu/articles/domestic-repression-and-international-aggression-why-xi-is-uninterested-in-diversionary-conflict/]

The theory of diversionary wars posits that leaders often have the incentive to pursue aggressive foreign policies in order to divert the domestic audience’s attention from domestic troubles. Through international conflict, leaders can either foster national solidarity or demonstrate their competence. Could Xi seek to consolidate power by adopting an assertive foreign policy in his second term? Crucially, diversionary war theory rests on a number of assumptions, two of which do not hold for Xi today. Assumption 1: Leaders prefer foreign adventure over addressing domestic troubles. As discussed earlier, in the realm of domestic policies, Xi has been criticized for primarily two things: his promotion of his cult of personality and a slowing Chinese economy overly focused on inefficient SOEs. It is easy for Xi to dial back his cult of personality, and he has already done so. Reverting his policy of guo jin min tui (“as the state advances, the private sector retreats”) is not going to be easy and would entail important financial system and legal reforms (see discussions from the 2018 Chinese Economists 50 forum), but is quite doable. There is little reason why Xi would want to create international tension to distract his critics when it is much more straightforward to directly address the domestic issues. Furthermore, a diversionary skirmish involving Vietnam or the Philippines over one of the South China Sea islands would hardly be significant enough for diversion. To rally the nation behind him, Xi must pick on Taiwan, Japan, or even the United States. The problem is that a confrontation with either Taiwan or Japan is highly risky. The Chinese military, which has not fought a war since the Sino-Vietnamese conflict in 1979 and is embroiled in corruption scandals, might well suffer defeat. Perhaps China could take on the United States in the economics arena, but China has been unable to react effectively to the ongoing trade war with the United States. Assumption 2: Key domestic political players want conflict. Most importantly, the CCP elites do not want international conflict, especially one involving the United States. This is not because the CCP elites like the United States, which is still seen by many as an imperial power that supports Japanese militarism and secessionism in Taiwan, Hong Kong, Tibet, and Xinjiang. However, in Fan’s words, it is important “to deal with domestic issues before pacifying the barbarians” (an nei rang wai). In the eyes of his critics, any foreign adventure would indicate that Xi was getting the priorities wrong and further deviate from Deng’s grand strategy of fostering a favorable foreign environment to promote development. A diversionary conflict is therefore likely to further galvanize Xi’s opposition.

# 2nc

### at: pdb

#### Plan and perm include *non-FTC actors*.

#### Involvement of external actors *that are political appointees* creates *perceptions* of external influence. That erodes the signal of FTC independence.

* The article outlines a difference between political appointees subject to *at-will* removal by POTUS (serve at the pleasure of the President – i.e. Solicitor General, AG, DOJ, etc) **VIS-A-VIS** *for-cause* agency Committee members. FTC Commissioners – an example in the article - operate on 7 year terms, spanning Administrations, and can solely be removed for-cause.

Kovacic ‘15

et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

On March 16, 1915, the Federal Trade Commission (“FTC”) opened for business and began what has proven to be a uniquely compelling experiment in economic regulation. The FTC was the first law enforcement agency to be designed “from the keel up” as a competition agency. One vital consideration in forming the new institution was to define its relationship to the political process. Among other features in the original FTC Act, Congress provided that the agency’s commissioners would have fixed, seven-year terms and that a commissioner could be removed during his or her term only for cause.

Through these and other design choices, Congress created what would come to be known as the world’s first “independent” competition agency. The FTC’s degree of insulation from direct political control supplied an influential model of institutional design and contributed to the acceptance of a norm, evident in modern commentary about competition law, that public enforcement agencies should be politically independent. This Essay examines the relationship of competition agencies to the political process. We use the experience of the FTC to address three major issues. First, what does it mean to say that a competition agency is “independent”? Second, how much insulation from political control can a competition agency achieve in practice? Third, how is the pursuit of political independence properly reconciled with demands that a competition agency be accountable for its decisions—an important determinant of legitimacy—and with the need to engage with elected officials to be effective in performing functions such as advocacy?

In addressing these questions, we seek to develop themes we have addressed in earlier work involving the establishment and operations of the FTC. We approach the topic in the spirit of Professor Herbert Hovenkamp, whose work shows how historical research can improve our understanding of a competition system. Professor Hovenkamp’s scholarship has deeply influenced our approach to this field, and we are honored to participate in a symposium that celebrates his extraordinary contributions to competition law and policy.

II. The Relationship of the Competition Agency to the Political Process: Design Tradeoffs

The suggestion that competition agencies be independent reflects a desire to enable enforcement officials to make decisions without destructive intervention by elected officials or by political appointees who head other government departments. One method of providing the desired independence from these forms of interference is for the law to state that competition agency leaders can be removed by elected officials only for good cause. Political intervention undermines sound policy making when it causes the agency to bend the application of competition law to serve special interests at the expense of the larger society’s well being. As discussed below, because antitrust-relevant behavior (e.g., a merger) can involve large commercial stakes and affect the economic fortunes of individual firms and communities, the decisions of a competition agency can attract close scrutiny by heads of state, legislators, and cabinet officials.

The need for independence arguably varies according to the function that the competition agency is performing. In carrying out some functions, particularly certain law enforcement functions, the agency requires greater insulation from political pressure. For other functions, broader involvement by elected officials in setting the agency’s agenda and determining its choice of projects may be appropriate.

The utmost degree of independence is warranted when a competition agency functions as an adjudicative decisionmaker. Congress gave the FTC authority to use administrative adjudication to develop norms of business conduct. After the agency initiates a formal prosecution and functions as a trade court, the legitimacy of its decisions requires the highest degree of assurance that sound technical analysis, not political intervention, determined the outcome.

#### Turf war disad.

#### Aff solvency is a net benefit – CP alone has *better solvency* than the perm.

Hittinger ‘19

et al; Carl W. Hittinger is a senior partner and serves as BakerHostetler’s Antitrust and Competition Practice National Team Leader and the litigation group coordinator for the firm’s Philadelphia office. He concentrates his practice on complex commercial and civil rights trial and appellate litigation, with a particular emphasis on antitrust and unfair competition matters, including class actions. “Antitrust Agency Turf War Over Big Tech Investigations” – The Temple 10-Q - This article is reprinted with permission from the Oct. 4, 2019, edition of The Legal Intelligencer. #E&F - https://www2.law.temple.edu/10q/antitrust-agency-turf-war-over-big-tech-investigations/

As we discussed in June 2018, because the FTC and DOJ have concurrent civil antitrust jurisdiction, they rely on a clearance agreement to coordinate their authority. The current agreement’s Appendix A seeks to prevent disputes by assigning particular industries to each agency. The quasi-independent, consumer-protection-focused FTC generally monitors industries that, as Simons recently put it, “most directly affect consumers and their wallets.” By contrast, the DOJ, an executive branch law enforcement agency, generally oversees less consumer-facing industries and sectors impacting national defense. Because Appendix A is perfunctory, however, disputes frequently arise when a company targeted for investigation falls between Appendix A’s cracks or, more commonly, straddles more than one industry. The clearance agreement lists criteria for resolving these disputes. Emphasizing specialization and conservation of resources, it grants priority to the agency “with expertise in the product or similar products … gained through a substantial antitrust investigation … within the last seven years.” The agreement also enumerates a list of tie-breaking factors; for example, an agency gets more “expertise” credit if a case was litigated to verdict than if it was filed and later settled. While the vast majority of disputes are settled with Appendix A and the tie-breaking criteria, disagreements may also be settled through a neutral evaluator and, ultimately, upon elevation to direct discussion by the FTC chairperson and the assistant attorney general for the Antitrust Division of the DOJ.

Conflicts Over Investigations Into Big Tech:

The agencies’ turf war over Big Tech suggests they may be struggling to apply the aging clearance agreement to companies and business models that were somewhat embryonic when it was drafted in 2002. For example, social media is not explicitly addressed in the agreement, and there appears to be no obvious analogue to it in Appendix A. Although there are reports that the FTC and DOJ struck a new clearance deal concerning Big Tech, there are bound to be hiccups. U.S. Sen. Mike Lee, chairman of the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, said last month: “What’s evident from this latest institutional tug of war is that the Antitrust Division of the DOJ and the FTC are now actively battling each other to take the lead in pursuing Big Tech.”

However, the emergence of Big Tech does not fully explain the discord. This summer, the DOJ and FTC publicly clashed in the FTC’s monopolization case against cellular chipmaker Qualcomm—a quarter-century-old enterprise whose product seems to fit neatly within Appendix A’s framework. The case was filed by a divided FTC commission in the waning days of the Obama administration, alleging the company licensed standard essential patents in an anticompetitive fashion. The district court ruled in the FTC’s favor, but, on Qualcomm’s appeal, the DOJ filed an amicus brief siding with Qualcomm’s request for a stay of the lower court’s ruling. It argued: “Immediate implementation of the remedy could put our nation’s security at risk, which is vital to military readiness and other critical national interests.”

More importantly, because the standard for a stay requires a peek at the merits of Qualcomm’s appeal, the DOJ found itself in the unusual position of undermining the FTC’s case: “Qualcomm is likely to succeed on the merits because the district court’s decision ignores established antitrust principles and imposes an overly broad remedy.” The FTC responded in its opposition brief that the DOJ “mischaracterized” the district court’s analysis, that it offered “unsubstantiated concerns” about R&D, and that it essentially asserted that Qualcomm should be immune from antitrust scrutiny.

Given the current political emphasis on a variety of real or perceived controversial competition issues, it is no wonder the FTC and DOJ have prioritized investigatory action over fidelity to the clearance process. As Sen. Amy Klobuchar, ranking member of the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, said in a September hearing, “I’d rather have a split investigation between the DOJ and FTC than no investigation.” The clearance agreement itself says: “Each agency nevertheless retains full responsibility and authority for the discharge of its statutory duties.”

September’s Senate Antitrust Oversight Hearing:

As has been widely reported, Big Tech clearance disputes played a role in a Sept. 17 Senate oversight hearing held by the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, which was attended by Simons and Delrahim. In opening remarks, Sen. Mike Lee chastised the agencies: “In the past, the agencies have avoided too much mischief because they’ve generally played well together. Recently, this appears quite regrettably to have changed. From what I can tell, clearance disputes have become more frequent, more pronounced, and more prolonged.”

Lee asked Delrahim and Simons whether the FTC and DOJ were still operating under the “clearance system to avoid duplicative efforts or have things broken down on this front?” Simons responded, “for the vast majority of matters, we continue to operate under the existing clearance agreement,” but, upon further questioning, agreed with Lee that “things have broken down at least in part.” Delrahim added: “I cannot deny that there are instances where Chairman Simons’ and my time is wasted on those types of squabbles.”

Lee also quizzed the agency heads whether, hypothetically, if they were asked to provide “advice on setting up an antitrust regime in another country … that didn’t already have one, would you under any circumstances recommend that they follow the U.S. model and that they have two separate agencies responsible for civil antitrust enforcement?” Simons responded flatly: “No, I wouldn’t.” Delrahim remarked, “it would be hard to imagine a system being designed at the first instance like we have today.” He conceded: “It’s not the best model of efficiency.”

The Hazards of Clearance Disputes:

Disputes over clearance can have tangible adverse effects on enforcement. First, some have commented that delays caused by clearance disputes can narrow the efficacy of remedial options, particularly with mergers. As Sen. Richard Blumenthal has commented, “The Big Tech companies are not waiting for the agencies to finish their cases. They are structuring their companies so that you can’t unscramble the egg.” Structural remedies are favored by Delrahim, who has commented that alternative, behavioral remedies should be used sparingly: “The division has a strong preference for structural remedies over behavioral ones. … The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.”

Second, disputes over clearance and, more so, duplicative investigations waste agency resources, threaten to blunt their effectiveness, and can lead to inconsistent and confusing governmental positions. In the Sept. 17 oversight hearing, Simons and Delrahim were both criticized for requesting an increase in funding: “As you both acknowledged, both of you could use, and desperately need, more resources. That being the case, it makes no sense to me that we should have duplication of effort, when that has a tendency inevitably to undermine the effectiveness of what you’re doing.” Duplicative investigations dilute the specialization that is a principal goal of the agencies’ clearance agreement and raise the risk that one agency will take legal positions that undercut the other. No doubt the DOJ’s amicus brief in the Qualcomm case influenced the U.S. Court of Appeals for the Ninth Circuit’s decision to issue a stay pending appeal.

#### Turf wars also cause imposed re-structuring - crushing FTC independence.

Birnbaum ‘19

Internally quoting William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. Emily Birnbaum is a Tech lobbying Reporter at Politico - “Antitrust enforcers in turf war over Big Tech” - The Hill - 09/17/19 - #E&F - https://thehill.com/policy/technology/461829-antitrust-enforcers-in-turf-war-over-big-tech

Typically during investigations, the FTC and DOJ will check in with each other and share resources to ensure there is no duplication. But experts are warning their disagreements could make the process more difficult.

Kovacic cautioned that both agencies had an interest in resolving those tensions.

“These kinds of tensions ... create an environment in which public officials begin to consider a basic restructuring of the U.S. system,” Kovacic said.

He said in that case, “Neither agency can be assured that it would be the survivor.”

### at: pdcp

#### Severs multiple things:

#### First, Aff severs *“Law”*

We aren’t prohibiting or expanding anything (below);

But if we were, it’s NOT an expansion of the LAW:

P.O.G.O. ‘15

Project On Government Oversight *- Internally quoting Chief Justice Roberts’ Majority Opinion in US Supreme Court’s 7-2 decision in Department of Homeland Security v. MacLean* (2015) - which dealt largely with statutory interpretation. The Project On Government Oversight (POGO). POGO’s investigators are experts in working with whistleblowers and other sources inside the government who come forward with information that we then verify using the Freedom of Information Act, interviews, and other fact-finding strategies. We publish these findings and release them to the media, Members of Congress and their constituents, executive branch agencies and offices, public interest groups, and our supporters. In addition to quoting the Majority Opinion from the Chief Justice, this article was authored by POGO’s Phillip Shaverdian – who is currently a Judicial Law Clerk within the U.S. District Court System and, at the time of the writing, was an intern within and correspondent on behalf of the Project On Government Oversight - “Agency Rules and Regulations Are Not Laws” - FEBRUARY 10, 2015 - #E&F – modified for language that may offend - https://www.pogo.org/analysis/2015/02/agency-rules-and-regulations-are-not-laws/

Agency Rules and Regulations Are Not Laws

In January, in one of the most riveting cases of the current session, the Supreme Court ruled 7-2 in favor of Transportation Security Administration (TSA) whistleblower Robert MacLean, holding that agency rules and regulations do not equate to laws. Chief Justice John Roberts wrote the majority opinion for the Court. And now that we’ve had time to celebrate the victory for MacLean, it’s time to turn our focus to what Department of Homeland Security v. MacLean may mean for whistleblowers in general.

Current federal whistleblower protection law—the Whistleblower Protection Act (WPA)—protects individuals against backlash from employers for disclosing information about “any violation of any law, rule or regulation” or “a substantial and specific danger to public health or safety” by a federal agency. However, in the same statute there exists an exception for disclosures that are “specifically prohibited by *law*.”

The question the Court sought to answer was whether MacLean’s disclosures were “specifically prohibited by *law*.”

The Homeland Security Act of 2002 states that the TSA’s “Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security” if they decide that the disclosure of that information would “be detrimental to the security of transportation.” The resultant regulations thus prohibit the disclosure of “sensitive security information” (SSI) without the proper authorization. Among the various types of information that could be designated SSI is “information concerning specific numbers of Federal Air Marshals, deployments or missions, and the methods involved in such operations.”

The government argued that MacLean’s disclosures were “specifically prohibited by law” and that the WPA did not offer protection for two reasons: 1) the disclosure was prohibited by specific TSA regulations on SSI; and 2) the Homeland Security Act authorizes the TSA to promulgate the regulations.

The Court addressed and subsequently rejected both arguments, affirming the judgment in favor of MacLean by the U.S. Court of Appeals for the Federal Circuit.

The Court rejected the government’s argument that a disclosure that is prohibited by regulation is also “specifically prohibited by law,” as prescribed by federal whistleblower statute.

The Court elaborates that in the WPA Congress repeatedly used the phrase “law, rule, or regulation,” but did not use the same phrase in the statutory language at question in this case. Instead, Congress used the word “law” alone, suggesting that it meant to exclude rules and regulations from the specific stipulation. Congress’s omission of “rule, or regulation” must be ~~viewed~~ (considered) as deliberate because of the use of “law” and “law, rule, or regulation” in the same sentence, as well as the frequent use of the latter phrase throughout the statute. These “two aspects of the whistleblower statute make Congress’s choice to use the narrower word “law” seem quite deliberate,” opined the Court.

After creating an exception for disclosures “specifically prohibited by law,” the WPA also creates a second exception for information “specifically required by Executive order to be kept secret.” The second exception is limited to actions taken by the President, and thus suggests that the first exception and the use of “law” is limited to actions by Congress.

The Court also reasons that “If ‘law’ included agency rules and regulations, then an agency could insulate itself from the scope of Section 2302(b)(8)(A) merely by promulgating a regulation that ‘specifically prohibited’ whistleblowing.” Instead, “Congress passed the whistleblower statute precisely because it did not trust agencies to regulate whistleblowers within their ranks.” The Court concluded that “it is unlikely that Congress meant to include rules and regulations within the word ‘law’” and that the specificity of the phrase “specifically prohibited by law” was meant to deliberately exclude rules and regulations.

#### Second, Increase prohibition and expand scope---the conduct is already prohibited---that’s 1NC Khan that we’ll include for clarity.

**NOTE**: All highlighted portions (green and blue) of this card were read in the 1NC. The 1NC card made solvency and competition claims – and, to offer context, we’ve used blue highlighting to outline the parts of the ev that augment our perm/competition claims.

Kahn ‘21

et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

Section 5 of the Federal Trade Commission Act prohibits “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s congressionally mandated duty to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement.

I. Background

On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5

In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9

With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10

II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts

By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths.

In 1914, Congress enacted the Federal Trade Commission Act to reach beyond the Sherman Act and to provide an alternative institutional framework for enforcing the antitrust laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 These concerns spurred the passage of the FTC Act, which created an administrative body that could police unlawful business practices with greater expertise and democratic accountability than courts provided.15

At the heart of the statute was Section 5, which declares “unfair methods of competition” unlawful.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides no private right of action, shielding violators from private lawsuits and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17

The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to leave it to the Commission to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the various unlawful practices, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20

The Supreme Court has repeatedly affirmed this view of the agency’s Section 5 authority, holding that the statute, by its plain text, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

#### Theoretically, Section 5 could already challenge the practice outlined by the Aff.

Federal Register: Rules and Regulations - ‘9

Federal Trade Commission - *16 Code of Federal Regulations*- 255 Guides Concerning the Use of Endorsements and Testimonials in Advertising Federal Acquisition Regulation; *Final Rule* - “Rules and Regulations” - Federal Register - Vol. 74, No. 198 - Thursday, October 15, 2009 - #E&F - https://www.ftc.gov/sites/default/files/documents/federal\_register\_notices/guides-concerning-use-endorsements-and-testimonials-advertising-16-cfr-part-255/091015guidesconcerningtestimonials.pdf

b. Examples 7-9 – New Media Several commenters raised questions about, or suggested revisions to, proposed new Examples 7-9 in Section 255.5, in which the obligation to disclose material connections is applied to endorsements made through certain new media.91 Two commenters argued that application of the principles of the Guides to new media would be inconsistent with the Commission’s prior commitment to address word of mouth marketing issues on a case-by-case basis.92 Others urged that they be deleted in their entirety from the final Guides, either because it is premature for the Commission to add them, or because of the potential adverse effect on the growth of these (and other) new media.93 Two commenters said that industry self-regulation is sufficient.94

The Commission’s inclusion of examples using these new media is not inconsistent with the staff’s 2006 statement that it would determine on a case-by-case basis whether law enforcement investigations of ‘‘buzz marketing’’ were appropriate.95 All Commission law enforcement decisions are, and will continue to be, made on a case-by-case basis, evaluating the specific facts at hand. Moreover, as noted above, the Guides do not expand the scope of liability under Section 5; they simply provide guidance as to how the Commission intends to apply governing law to various facts. In other words, the Commission *could* challenge the dissemination of deceptive representations made via these media regardless of whether the Guides contain these examples; thus, not including the new examples would simply deprive advertisers of guidance they otherwise could use in planning their marketing activities.96

#### The CP has an agency alter its enforcement discretion related to an existing statutory prohibition. That’s not an increase in prohibitions.

Kusserow ‘91

R.P. Kusserow, Inspector General, Department of Health and Human Services - 42 Code of Federal Regulations - Part 1001, RIN 0991-AA49 – “Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions” - Monday, July 29, 1991 (56 FR 35952) - AGENCY: Office of Inspector General (OIG), HHS. ACTION: Final rule - #E&F - https://oig.hhs.gov/fraud/docs/safeharborregulations/072991.htm

I. Background

A. The Medicare Anti-Kickback Statute

Section 1128B(b) of the Social Security Act (42 U.S.C. 1320a-7b(b)), previously codified at sections 1877 and 1909 of the Act, provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

This provision is extremely broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or State health care programs.

Since the statute on its face is so broad, concern has arisen among a number of health care providers that many relatively innocuous, or even beneficial, commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

B. Public Law 100-93

Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, added two new provisions addressing the anti-kickback statute. Section 2 specifically provided new authority to the Office of Inspector General (OIG) to exclude an individual or entity from participation in the Medicare and State health care programs if it is determined that the party has engaged in a prohibited remuneration scheme. (Section 1128(b)(7) of the Act, 42 U.S.C. 1320a-7(b)(7)) This new sanction authority is intended to provide an alternative civil remedy, short of criminal prosecution, that will be a more effective way of regulating abusive business practices than is the case under criminal law.

In addition, section 14 of Public Law 100-93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B of the Act and that will not provide a basis for exclusion from the Medicare program or from the State health care programs under section 1128(b)(7) of the Act.

C. Notice of Intent

The legislative history of section 14 of Public Law 100-93 indicates that Congress expected the Department of Health and Human Services to consult with affected provider, practitioner, supplier and beneficiary representatives before promulgating regulations. In order to most effectively address issues related to this provision, we published a notice of intent to develop regulations (52 FR 38794, October 19, 1987) soliciting comments from interested parties prior to developing a proposed regulation. As a result of that notice, the OIG received a number of public comments, recommendations and suggestions on generic criteria that can be applied to particular types of business arrangements in order to determine if such arrangements are inappropriate for civil or criminal sanctions.

D. Notice of Proposed Rulemaking

The proposed regulation designed to implement section 14 of Public Law 100-93 was developed by the OIG and published in the Federal Register on January 23, 1989 (54 FR 3088). The regulation sets forth various proposed business and payment practices, or "safe harbors," that would not be treated as criminal offenses under section 1128B(b) of the Act and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act. As a result of that proposed rulemaking, we received a total of 754 public comments for consideration.

II. Summary of the Proposed Rule

A. Business Arrangements Not Exempt

The proposed regulation indicated that in order for a business arrangement to comply with one of the ten safe harbors, each standard of that safe harbor provision would have to be met. The proposed rule stated that if the business arrangement involves payments for different purposes (for example a single payment for personal services and for equipment rental) then each payment purpose would be analyzed to determine if all the standards of each applicable safe harbor provision have been fulfilled. The proposed rule *further* specified that where individuals and entities have entered into arrangements that are covered by the statute and where they have chosen not to fully comply with one of the exemptions proposed in these regulations, they would risk scrutiny by the OIG and may be subject to civil or criminal enforcement action.

B. Need for Continuing Guidance

Since there may be a need for the Department to respond to changes in health care delivery or business arrangements more quickly and informally than through the regulatory process to keep the industry abreast of our enforcement policy, the proposed rule invited public comment on how we can best achieve the dual goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments.

C. Notice to Beneficiaries

While we considered including in several of the proposed safe harbor provisions a requirement that a person notify each Medicare or Medicaid patient he or she refers to a related entity of the financial relationship that exists, we indicated that such notice requirements may be unduly burdensome compared with the potential benefits and, therefore, did not include the requirement in the safe harbors in the proposed regulation. Instead, we invited public comments on this issue.

D. Preferred Provider Organizations

We cited the increasing variety of arrangements among entities grouped under the generic headings "preferred provider organizations" (PPOs) or "managed care," and that unlike HMOs, there is often no single entity that is recognized as the "health care provider." The proposed regulations did not specifically delineate a safe harbor provision for these arrangements since we believed that one or more of the other proposed safe harbors would often cover relationships in preferred provider and managed care networks. We invited comments from the public, however, on the idea of adding additional safe harbors that would provide further protection to HMOs, PPOs, and other managed care plans.

E. Waiver of Coinsurance and Deductible Amounts for Inpatient Hospital Care

We noted that with the advent in 1983 of the prospective payment system for paying hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. We solicited comments on defining a safe harbor for waiving coinsurance and deductible amounts that would be limited to inpatient hospital care, be available to all Medicare beneficiaries without regard to diagnosis or length of stay, and assure that any costs to the hospital of waiving the coinsurance and deductible amounts would not be passed on to any Federal program as a bad debt or in any other way.

F. Proposed Safe Harbors

The regulation published on January 23, 1989, proposing to amend 42 CFR part 1001 by adding a new § 1001.952, set forth "safe harbors" in ten broad areas:

1. Investment Interests

To reflect the view that Congress did not intend to bar all investments by physicians in other health care entities to which they refer patients, a safe harbor provision was proposed for investment interests in large public corporations where such investments are available to the general public. This safe harbor described a minimum number of shareholders and a minimum number of assets the company must have in order to qualify under this provision

Safe harbors for limited and managing partnerships were considered under the proposed regulation, but were not included. These areas were discussed in the preamble of the proposed rule, and we specifically requested public comments on adopting these practices as safe harbors.

2. Space Rental

While many rental arrangements are legitimate, many situations exist where rental payments are simply a device used to mask illegal payments intended to induce referrals. Accordingly, a safe harbor provision was proposed for rental arrangements if: (a) Access to the space is for periodic intervals and such intervals are set in advance in the lease, rather than based on the number of referred patients; (b) the lease is for at least one year so it cannot be readjusted on too frequent a basis to reflect prior referrals; and (c) the charges reflect fair market value.

3. Equipment Rental

With the understanding that the payment for the use of diagnostic and other medical equipment may simply be a vehicle to provide reimbursement for referrals, a safe harbor was proposed for certain situations involving equipment rentals similar to those applied to real estate rentals cited above.

4. Personal Services and Management Contracts

While health care providers often have arrangements to perform services for each other on a mutually beneficial basis, some of these arrangements may vary the payment with the volume of referrals. The proposed regulation set forth a safe harbor provision for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met that limit the opportunity to provide financial incentives in exchange for referrals. This proposed provision required the services to be paid at fair market value, and was predicated on requirements similar to those set forth in the provisions for space and equipment rental.

5. Sale of Practice

Unlike the traditional sale of a practice by a retiring physician, a physician may sell, or appear to sell, a practice to a hospital while continuing to practice on its staff. A safe harbor provision was proposed for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in which he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals.

6. Referral Services

Professional societies and other consumer-oriented groups often operate referral services for a fee. Because such a service fee could be construed as a payment in order to obtain a referral, we concluded that it was appropriate to establish a specific safe harbor for this type of practice. In order to safeguard against abuse, however, the provision is only available when several standards are met.

7. Warranties

It is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. A safe harbor was proposed for such purposes.

8. Discounts

Safe harbors relating to discounts, employees and group purchasing organizations are specifically required by statute. The discount exception was intended to encourage price competition that benefits the Medicare and Medicaid programs. The proposed discount provision was limited in application to reductions in the amount a seller charges for a good or service to the buyer. The discount could take the form of a specified price break, or the inclusion of an extra quantity of the item purchased "at no extra charge." We did not propose to protect many kinds of marketing incentive programs such as cash rebates, free goods or services, redeemable coupons, or credits.

9. Employees

The proposed exception for employees permitted an employer to pay an employee in whatever manner he or she chose for having that employee assist in the solicitation of program business and applied only to bona fide employee- employer relationships.

10. Group Purchasing Organizations

The proposed group purchasing organization (GPO) exception was designed to apply to payments from vendors to entities authorized to act as a GPO for individuals or entities who are furnishing Medicare or Medicaid services. The proposed exception required a written agreement between the GPO and the individual or entity that specifies the amounts vendors will pay the GPO.

III. Response to Comments and Summary of Revisions

As indicated above, in response to the proposed rulemaking we received 754 public comments from various provider groups, medical facilities, professional and business organizations and associations, medical societies, State and local government entities, private (35954) practitioners and concerned citizens. The comments included both general and broadreaching concerns regarding the impact of this regulation, and specific comments on those areas and safe harbor provisions about which we requested public input. A summary of the comments received and our responses to those comments follows.

A. General Comments

Comment: A large number of commenters expressed concern about the implication of engaging in a business arrangement that does not comply fully with a provision of this regulation. Some of these commenters expressed the view that the safe harbor provisions are narrowly drawn and leave many lawful business arrangements unprotected. Moreover, the preamble to the proposed rule warns: "[W]here individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to comply fully with one of the exemptions in these regulations, they would risk scrutiny by the OIG \* \* \*." These commenters urged the OIG to make clear that the failure to comply fully with a safe harbor provision is not per se illegal, and does not mean that prosecution will automatically follow. In addition, they requested safe harbor protection for business arrangements where there has only been a "technical violation" of the statute, where there has been "substantial compliance" with this regulation, or where the remuneration in question is "de minimis."

Response: This regulation covers many categories of business arrangements, providing standards to be met within each safe harbor provision. If a person participates in an arrangement that fully complies with a given provision, he or she will be assured of not being prosecuted criminally or civilly for the arrangement that is the subject of that provision.

This regulation does not expand the scope of activities that the statute prohibits. The statute itself describes the scope of illegal activities. The legality of a particular business arrangement must be determined by comparing the particular facts to the proscriptions of the statute.

The failure to comply with a safe harbor can mean one of three things. First, as we stated in the preamble to the proposed rule, it may mean that the arrangement does not fall within the ambit of the statute. In other words, the arrangement is not intended to induce the referral of business reimbursable under Medicare or Medicaid; so there is no reason to comply with the safe harbor standards, and no risk of prosecution.

Second, at the other end of the spectrum, the arrangement could be a clear statutory violation and also not qualify for safe harbor protection. In that case, assuming the arrangement is obviously abusive, prosecution would be very likely.

Third, the arrangement may violate the statute in a less serious manner, although not be in compliance with a safe harbor provision. Here there is no way to predict the degree of risk. Rather, the degree of the risk depends on an evaluation of the many factors which are part of the decision-making process regarding case selection for investigation and prosecution. Certainly, in many (but not necessarily all) instances, prosecutorial discretion would be exercised not to pursue cases where the participants appear to have acted in a genuine good-faith attempt to comply with the terms of a safe harbor, but for reasons beyond their control are not in compliance with the terms of that safe harbor. In other instances, there may not even be an applicable safe harbor, but the arrangement may appear innocuous. But in other instances, we will want to take appropriate action.

We do not believe the Medicare and Medicaid programs would be properly served if we assured protection in all instances of "substantial compliance," "technical violations," or "de minimis" payments. Unfortunately, these are vague concepts, subject to differing interpretations. In this regulation, we have attempted to provide bright lines, to the extent possible, for safe harbors in order to provide clarity and predictability as to what conduct is immune from government action. Our endorsement of the concepts mentioned above would only serve to blur these lines and produce litigation as to what "substantial," "technical" and "de minimis" really mean. The OIG therefore declines to adopt these concepts.

### 2nc – rollback f/l

#### 3- Aff Rollback args don’t assume the FTC’s recent recission of 2015 guidance *OR* our Cplan plank that sets a clear interpretation.

Salop ‘21

et al; Steven C. Salop, Professor of Economics and Law, Georgetown University Law Center “A New Section 5 Policy Statement Can Help the FTC Defend Competition” – Public Knowledge – July 19th - #E&F - https://publicknowledge.medium.com/a-new-section-5-policy-statement-can-help-the-ftc-defend-competition-a76451eacb39

We generally agree with the Federal Trade Commission’s decision to rescind its 2015 Section 5 Policy Statement. Just as the Department of Justice and Federal Trade Commission Merger Guidelines are regularly updated on the basis of agency experience, legal and economic developments, so should this type of policy statement. Rescinding the old statement is particularly relevant in light of the growing recognition of the hurdles preventing effective antitrust enforcement.

Calls for reform have not come solely from Neo-Brandeisian commentators (including both FTC Chair, Lina Khan, and Tim Wu, now a member of the National Economic Council). The need for reform and a varied set of proposals has also been expressed by economics-oriented commentators, including this group of former Justice Department enforcers, Jonathan Baker and Herbert Hovenkamp, among others. Chair Khan in her statement suggested that the Commission would next consider replacing the Policy Statement with a new statement explaining how they plan to use Section 5 to increase competition. We think this would be a valuable way to show parties and courts what is coming. This article provides several suggestions that would be useful to consider and possibly include in the revised Section 5 Policy Statement. It should not be taken as an exhaustive list; there certainly may be other approaches to a revised statement that could also be effective.

A revised Policy Statement should make it clear that Section 5 is not identical to the Sherman and Clayton Act and that conduct can be challenged as an unfair method of competition under Section 5 even if it would not violate these other antitrust laws. In fact, even the original 2015 Policy Statement explicitly made this point. But the distinction between Section 5 and these other statutes is often ignored or suppressed by commentators who object to more vigorous antitrust enforcement by the FTC. Eventually, the FTC’s cases and rules under Section 5 will likely face the scrutiny of the courts. At that time, it may be particularly helpful to have a clear Policy Statement of how the FTC is interpreting Section 5. This can help maximize the impact the FTC can have, while assuaging concerns of detractors who say there is no limiting principle.

#### 4- Our *Guidance distinction* means no rollback

* Agencies can issue *“Guidance”* (and enforce) – or they can create *“Rulemaking”* – both have legal force, but the latter tends to encounter more judicial review/resistance.

Raso ‘10

CONNOR N. RASO – J.D., Yale Law School expected 2oo; Ph.D., Stanford University Department of Political Science expected 2010 - “Strategic or Sincere? Analyzing Agency Use of Guidance Documents” – Yale Law Journal – v. 119:782 - #E&F - https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5196&context=ylj

5. Judicial Challenge

Agencies concerned that the courts will invalidate their policy decisions will be motivated to use guidance documents more frequently relative to legislative rules. Guidance documents are advantageous because they are less likely to be challenged. Even if challenged, agencies have a reasonable probability of winning on ripeness or finality grounds.

#### 5- Prefer SCOTUS *precedent* AND *empirics dipped from when the Court’s ideology was most aligned with the Chicago School*.

Dagen ‘10

Richard – Formerly, Adjunct Professor Boston University School of Law (Aug 2005 - Dec 2006) specializing in Antitrust; former Kramer Fellow - Harvard Law School. At the time of this writing, the author served as Antitrust, High Tech and Antitrust Special Counsel to the Director, Bureau of Competition, Federal Trade Commission “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT” – BOSTON UNIVERSITY LAW REVIEW - Vol. 90 - #E&F - http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

The FTC enforces Section 5, which makes unlawful “unfair methods of competition.”118 In FTC v. Sperry & Hutchinson Co., the Supreme Court held that Section 5 “empower[s] the Commission to define and proscribe an unfair competitive practice, even though the practice does not infringe either the letter or the spirit of the antitrust laws.”119 Many believe that the interpretation of Section 5 as broader than the Sherman Act is a remnant of a bygone era. But even during the Chicago School era, the Supreme Court reaffirmed its understanding that Section 2 and Section 5 differed. For example, in Copperweld Corp. v. Independence Tube Corp., while attempting to limit the reach of the Sherman Act, the Reagan antitrust team, led by Assistant Attorney General William Baxter, and FTC Chairman James Miller, submitted an amicus brief highlighting that “[t]he courts have held that some forms of less dangerous, but nonetheless anticompetitive, unilateral conduct may be subject to Section 5 of the Federal Trade Commission Act.”120 The Court thereafter explained that single firm conduct was governed not only by Section 2 but also by Section 5.121 In 1986, the Court more specifically and directly referenced the “spirit” of Section 5, stating that Section 5 “encompass[es] not only practices that violate the Sherman Act and other antitrust laws, . . . but also practices that the Commission determines are against public policy for other reasons.”122

### 2nc – cafos

#### No climate impact

Zycher 21 --- Benjamin Zycher is a resident scholar at the American Enterprise Institute, doctorate in economics from UCLA, a Master in Public Policy from the University of California, Berkeley, and a Bachelor of Arts in political science from UCLA, “The Case for Climate-Change Realism”, National Affairs, Summer 2021, https://www.nationalaffairs.com/publications/detail/the-case-for-climate-change-realism

Beyond exhibiting extreme overconfidence in a cherry-picked analysis of climate-change causes, politicians and activists frequently ground their alarmism in frightening predictions about consequences that are likewise far from certain. This is not only true within the very new (and still quite unreliable) field of predictive climate science; it is true even in the context of ongoing climate phenomena. Indeed, politicians and journalists frequently characterize dramatic or unusual climate phenomena as the product of anthropogenic climate change, yet there is little evidence to support those claims

For one thing, there is no observable upward trend in the number of "hot" days between 1895 and 2017; 11 of the 12 years with the highest number of such days occurred before 1960. Since 2005, NOAA has maintained the U.S. Climate Reference Network, comprising 114 meticulously maintained temperature stations spaced more or less uniformly across the lower 48 states, along with 21 stations in Alaska and two stations in Hawaii. They are placed to avoid heat-island effects and other such distortions as much as possible. The reported data show no increase in average temperatures over the available 2005-2020 period. In addition, a recent reconstruction of global temperatures over the past 1 million years — created using data from ice-sheet formations — shows that there is nothing unusual about the current warm period.

Rising sea levels are another frequently cited example of impending climate crisis. And yet sea levels have been rising since at least the mid-19th century. This rise is tied closely with the end of the Little Ice Age that occurred not long before, which led to a rise in global temperatures, some melting of sea ice, and a thermal expansion of sea water. There is some evidence showing an acceleration in sea-level rise beginning in the early 1990s: Satellite measurements of sea levels began in 1992 and show a sea-level rise of about 3.2 millimeters per year between 1993 and 2010. Before 1992, when sea levels were measured with tidal gauges, the data showed an increase of about 1.7 millimeters per year on average from 1901 to 1990.

But because the datasets are from two different sources — satellite measurements versus tidal gauges — they are not directly comparable, and therefore they cannot be interpreted as showing an acceleration in sea-level rises. Moreover, the period beginning in 1993 is short in terms of global climate phenomena. Since sea levels have risen at a constant rate, remained constant, or even fallen during similar relatively short periods, inferences drawn from them are problematic. It is of course possible there has been an acceleration in sea-level rise, but even still, it would not be clear whether such a development stemmed primarily from anthropogenic or natural causes; clearly, both processes are relevant.

A study of changes in Arctic and Antarctic sea ice yields very different inferences. Since 1979, Arctic sea ice has declined relative to the 30-year average (again, the degree to which this is the result of anthropogenic factors is not known). Meanwhile, Antarctic sea ice has been growing relative to the 30-year average, and the global sea-ice total has remained roughly constant since 1979.

Extreme weather occurrences are likewise used as evidence of an ongoing climate crisis, but again, a study of the available data undercuts that assessment. U.S. tornado activity shows either no increase or a downward trend since 1954. Data on tropical storms, hurricanes, and accumulated cyclone energy (a wind-speed index measuring the overall strength of a given hurricane season) reveal little change since satellite measurements of the phenomena began in the early 1970s. The number of wildfires in the United States shows no upward trend since 1985, and global acreage burned has declined over past decades. The Palmer Drought Severity Index shows no trend since 1895. And the IPCC's Fifth Assessment Report, published in 2014, displays substantial divergence between its discussion of the historical evidence on droughts and the projections on future droughts yielded by its climate models. Simply put, the available data do not support the ubiquitous assertions about the causal link between greenhouse-gas accumulation, temperature change, and extreme weather events and conditions.

Unable to demonstrate that observed climate trends are due to anthropogenic climate change — or even that these events are particularly unusual or concerning — climate catastrophists will often turn to dire predictions about prospective climate phenomena. The problem with such predictions is that they are almost always generated by climate models driven by highly complex sets of assumptions about which there is significant dispute. Worse, these models are notorious for failing to accurately predict already documented changes in climate. As climatologist Patrick Michaels of the Competitive Enterprise Institute notes:

During all periods from 10 years (2006-2015) to 65 (1951-2015) years in length, the observed temperature trend lies in the lower half of the collection of climate model simulations, and for several periods it lies very close (or even below) the 2.5th percentile of all the model runs. Over shorter periods, such as the last two decades, a plethora of mechanisms have been put forth to explain the observed/modeled divergence, but none do so completely and many of the explanations are inconsistent with each other.

Similarly, climatologist John Christy of the University of Alabama in Huntsville observes that almost all of the 102 climate models incorporated into the Coupled Model Intercomparison Project (CMIP) — a tracking effort conducted by the Lawrence Livermore National Laboratory — overstate past and current temperature trends by a factor of two to three, and at times even more. It seems axiomatic to say we should not rely on climate models that are unable to predict the past or the present to make predictions about the distant future.

The overall temperature trend is not the only parameter the models predict poorly. As an example, every CMIP climate model predicts that increases in atmospheric concentrations of greenhouse gas should create an enhanced heating effect in the mid-troposphere over the tropics — that is, at an altitude over the tropics of about 30,000-40,000 feet. The underlying climatology is simple: Most of the tropics is ocean, and as increases in greenhouse-gas concentrations warm the Earth slightly, there should be an increase in the evaporation of ocean water in this region. When the water vapor rises into the mid-troposphere, it condenses, releasing heat. And yet the satellites cannot find this heating effect — a reality suggesting that our understanding of climate and atmospheric phenomena is not as robust as many seem to assume.

The poor predictive record of mainstream climate models is exacerbated by the tendency of the IPCC and U.S. government agencies to assume highly unrealistic future increases in greenhouse-gas concentrations. The IPCC's 2014 Fifth Assessment Report, for example, uses four alternative "representative concentration pathways" to outline scenarios of increased greenhouse-gas concentrations yielding anthropogenic warming. These scenarios are known as RCP2.6, RCP4.5, RCP6, and RCP8.5. Since 1950, the average annual increase in greenhouse-gas concentrations has been about 1.6 parts per million. The average annual increase from 1985 to 2019 was about 1.9 parts per million, and from 2000 to 2019, it was about 2.2 parts per million. The largest increase that occurred was about 3.4 parts per million in 2016. But the assumed average annual increases in greenhouse-gas concentrations through 2100 under the four RCPs are 1.1, 3.0, 5.5, and an astounding 11.9 parts per million, respectively.

The studies generating the most alarmist predictions are the IPCC's Special Report on Global Warming of 1.5°C and the U.S. government's Fourth National Climate Assessment, both of which were published in 2018. Both assume RCP8.5 as the scenario most relevant for policy planning. The average annual greenhouse-gas increase under RCP8.5 is over five times the annual average for 2000-2019 and almost four times the single biggest increase on record. Climatologist Judith Curry, formerly of the Georgia Institute of Technology, describes such a scenario as "borderline impossible."

RCP6 is certainly more realistic. It predicts a temperature increase of 3 degrees Celsius by 2100 in the average of the CMIP models. But on average, those CMIP models overstate the documented temperature record by a factor of at least two. Ultimately, models with a poor record of successfully accounting for past data and highly unrealistic future greenhouse-gas concentrations should not be considered a reasonable basis for future policy formulation.

# 1nr

#### Alt cause to Xi – Hong Kong, trade war, food scarcity, COVID

Deng 19 [Dean Cheng is the Heritage Foundation's research fellow on Chinese political and security affairs. 7-19-2019 https://www.newsweek.com/hong-kong-tiananmen-taiwan-1450231]

Xi Jinping's Worries

This is not to say that Xi Jinping will necessarily have infinite patience, however. For Xi, Hong Kong represents an additional burden in a time of troubles. Responding as Deng and Li Peng did thirty years ago will tar his reputation, even as he will remain in power for an extended time, having eliminated term limits on his role as Chinese president.

Xi also wishes to resolve the situation promptly. As the trade war drags on, Chinese factories, and workers, are likely to suffer economic hits. The spread of African swine flu and fall armyworm will affect food prices. Protests in Wuhan over a new incinerator plant are a reminder of other chronic problems that undermine the Chinese Communist Party's image. For Hong Kong, with its massive Western media presence, to have constant protests can only add to Xi's headaches.

A desire for a rapid resolution may not lead to a peaceful one, however. Xi likely wants to demonstrate that it is he, not Hong Kong, that determines the fate of the Special Administration Region. This will become more pressing as the current protests now include not only students but workers, shop-keepers, and mothers. If a broad cross-section of Hong Kong moves to oppose him, maintaining control could become more difficult. The use of violence in some of the most recent protests, including the storming of the Legislative Council's offices, unfortunately provides Xi with an excuse to suppress the protests, possibly forcefully.

#### Arctic war means extinction

Chrisinger ‘20

Internally quoting Niklas Granholm – who is Deputy Director of Studies at FOI, the Swedish Defence Research Agency, Division for Defence Analysis. Mr Granholm currently heads a study project on behalf of the Swedish Foreign Ministry studying the strategic developments in the Arctic. He was seconded to the Swedish Ministry of Defence in 2007 and during 2006 was a Visiting Fellow to RUSI. He has been an Associate Fellow of the Institute since 2007. Between 1999-2006, he headed the project for international peace support and crisis management operations on behalf of the Swedish Ministry of Defence. From 1997-99 he was seconded to the Swedish Ministry for Foreign Affairs, Division for European Security Policy. David Chrisinger is a Logan Nonfiction Fellow and a contributing writer to The New York Times Magazine and The War Horse, an award-winning nonprofit newsroom educating the public on military service, war, and its impact. Prior to this, David worked at the U.S. Government Accountability Office as a Strategic Planning and Foresight Analyst. For nearly nine years, he taught public policy writing, consulted with researchers on the design and execution of governmental audits and evaluations, facilitated message development exercises, and wrote and edited reports and testimonies for the U.S. Congress. For six years, he also taught public policy writing at Johns Hopkins University. “It Would Be a Mistake to Underestimate Russia”: The New Cold War That’s Emerging in the Arctic” – The War Horse – Nov 19th - #E&F - https://thewarhorse.org/military-arctic-new-cold-war-with-russia-and-climate-change/

One of the greatest risks, according to Niklas Granholm, is that the Arctic region will undergo a “Balkanization” like what occurred in Eastern Europe after the fall of the Soviet Union. Granholm is the deputy director of studies at the Swedish Defence Research Agency, and he points to the Faroe Islands calling for self-rule from Denmark, Scotland clamoring for independence from the United Kingdom after Brexit, and the resurgence of troubles in Northern Ireland as indicators that more fragmentation and political division in the Arctic could lead to less cooperation or even hostility. Paired with the great-power competition among the United States, Russia, and China, any Balkanization of the region would, in Granholm’s words, be a “double whammy” and could make the Arctic much more combustible.

“Whatever happens in the Arctic won’t stay there,” he said. “It will escalate.”

Is this the beginning of a new Cold War?

The new Norwegian radar system undermines Russia’s ability to launch a retaliatory nuclear strike from its submarine fleet in the Arctic, New York Times reported, and that bothers Russia, according to Lt. Col. Tormod Heier, a faculty adviser at the Norwegian Defense University College. Because it upsets the strategic nuclear balance between the United States and Russia, the new radar system establishes a blow to Russia’s last indisputable claim to great-power status.

“There is a new Cold War,” Heier told the Times, adding that the risk of nuclear war was much higher now than in the old Cold War “because Russia is so much weaker, and because of that much more dangerous and unpredictable.”

In recognition of the threats posed by a new Cold War, the Pentagon released an updated National Defense Strategy in January 2018. While the document makes no specific mention of the Arctic, it recognizes the threats posed by great-power competition (especially as it relates to America’s eroding competitive edge) and clarifies that potential conflict with Russia and China had supplanted terrorism as the biggest threat to American national security.

To achieve this end state, the United States must confront three risks that, if they materialized, would stand in the way. First, bad actors could use the Arctic as a staging ground for an attack on the U.S. homeland. Second, states like Russia and China could challenge the rules-based international order in the Arctic in ways that could lead to conflict. Third, but not least, tensions, competition, and conflict in other parts of the world could spill over into the Arctic.

Three months later, the U.S. Coast Guard released its own strategy for the Arctic, which called for funding to upgrade ships, aircraft, and unmanned systems operating in the region. Admiral Karl Schultz, the Coast Guard’s commandant, told the Washington Post that the goal should be to return the Arctic to a “peaceful place where we work to cross international lines here with partner nations that share interests in a transparent fashion.” Projecting sovereignty, he continued, will help expedite that return.

But all these plans have failed to persuade decision makers to establish new organizational structures designed to address changes in the Arctic wrought by climate change and the rush to exploit the region’s natural resources. The plans do not include any substantive plans to guide the construction of infrastructure needed in the region, nor do they detail how resources will need to be reallocated to mitigate risks and help the United States reach its desired end state. They provide a vision for the future, but they do not provide a road map on how to get there.

Russia won’t back down

In late August 2019, a Russian submarine emerged from the icy waters near the North Pole and fired a Sineva-type intercontinental ballistic missile capable of carrying a nuclear warhead. That same day, another Russian submarine in the Arctic Circle launched a Bulava-type intercontinental ballistic missile from beneath the surface of the Barents Sea. One missile hit a remote corner of Russia’s Pacific coast, and the other landed on the Kanin Peninsula. Twelve years after Russia planted its flag on the seabed below the North Pole, this demonstration of its military capabilities in the Arctic can be seen as its latest attempt to assert its sovereignty in the region. Against a broader backdrop of distrust and diminished communication across the U.S.-Russia divide, there exists a risk that relatively minor miscalculations or misinterpretations could escalate into broader conflict.

#### Nations DID model, but that emulation’s STILL OCCURING and attentive to US posture.

Nam ‘18

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – This is footnote #26 of the article – and it includes an excerpt from William J. Kolasky, former Deputy Assistant AG. of the Dept’ of Justice - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

26. Many of the *emergent* antitrust laws worldwide in recent decades have been modeled after their predecessors in the U.S. and the EU. See, e.g., Kolasky:

Let me turn finally to the new International Competition Network (or ICN). The last decade has seen market principles, deregulation and respect for competitive forces broadly embraced around the world. Over 90 countries—accounting for nearly 80 percent of world production (19)—have enacted antitrust laws, and at least 60 have antitrust merger notification regimes. Many of these laws are modeled after the U.S. or EU antitrust laws. Now the real work begins. Having convinced much of the world to structure their national economies around competition and free markets, we must ensure that antitrust works effectively and efficiently to deliver what it promises.

#### Even if there’s permanent fiat for this narrow Aff, false positives cause SCOTUS latching. SCOTUS broadly whittles all anti-trust - hurting enforcement vs. all false negatives – turning case.

Kades ’18

Michael Kades - Director, Markets and Competition Policy - Washington Center for Equitable Growth - Comments of the Washington Center for Equitable Growth. Michael worked as Antitrust Counsel for Sen. Amy Klobuchar (D-MN), the ranking member on the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, where he led efforts to reform antitrust laws. Previously, he spent 20 years investigating and litigating some of the most significant antitrust actions as an attorney at the Federal Trade Commission. Topic 1: The State of Antitrust and Consumer Protection Law and Enforcement, and Their Development, since the Pitofsky Hearings - August 20, 2018 - #E&F - <https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0048-d-0051-155290.pdf>

But not all antitrust scholars agree that false positives are more costly than false negatives in antitrust law. In particular, recent economic theory and empirical work provide numerous objections that should be explored. For instance, the premise that markets correct more quickly than judicial error are empirical claims that have not been tested.21 The market may take longer to correct anticompetitive activity than is presumed. Entry may be difficult,22 and cartels can last a long time.23 Similarly, false negatives can be costly and long-lived. False negatives may occur more frequently than false positives.24 If the empirical evidence is showing these costs to be much higher than previously anticipated, then the relevant question should be how to balance enforcement to achieve the most competition and greatest benefit.

Despite the lack of systematic evidence, the judiciary has largely accepted that over-inclusive rules, which generate false positives, are costlier to consumers than under-inclusive rules, which generate false negatives. And, application of error-cost analysis has justified doctrine that is more lenient toward business conduct under the antitrust laws. The U.S. Supreme Court has restricted monopolization claims to avoid false positives.25 Initially, in antitrust challenges to pharmaceutical patent settlements, courts implicitly relied on concerns about false positives in justifying lenient rules allowing reverse payments.26 Even in merger cases, courts have warned about the dangers of false positives.27 They, however, very rarely discuss the dangers of underinclusive rules. Consequently, it would not be surprising if courts have over-emphasized false positives in designing antitrust rules, making these concerns an important line of inquiry during the hearings.

#### 2. Economy – DROPPED that the presumption is interpreted across agriculture AND in other sectors – those costs kills global economic stability.

* Even if other nations comprise a larger statistical share of the global economy, uncertainty in the US – not other nations – is what would trigger a global spiral.

Bloom ‘21

et al ; Nicholas Bloom Professor of Economics, School of Humanities and Sciences Senior Fellow, Stanford Institute for Economic Policy Research - “From COVID-19 to Brexit, this is how uncertainty affects the global economy” – WEF – January - #E&F - https://www.weforum.org/agenda/2021/01/global-uncertainty-index-economics-us-uk-covid-coronavirus-pandemic-brexit-china/

Economic growth in key systemic economies, like those of the United States and European Union, is a key driver of economic activity in the rest of the world. Is this also true when it comes to global uncertainty? For example, given the higher interconnectedness across countries, should we expect that uncertainty from the U.S. election, Brexit, or China-U.S. trade tensions spill over and affect uncertainty in other countries?

To answer this question, we construct an index that measures the extent of “uncertainty spillovers” from key systemic economies—the Group of 7 (G7) countries plus China—to the rest of the world. In particular, we identify uncertainty spillovers from systemic economies by text mining the Economist Intelligence Unit country reports, covering 143 countries from the first quarter of 1996 to the fourth quarter of 2020.

Uncertainty spillovers from each of the systemic economies are measured by the frequency that the word “uncertainty” is mentioned in the reports in proximity to a word related to the respective systemic-economy country. Specifically, for each country and quarter, we search the country reports for the words “uncertain,” “uncertainty,” and “uncertainties” appearing near words related to each country. The country-specific words include country’s name, name of presidents, name of the central bank, name of central bank governors, and selected country’s major events (such as Brexit).

To make the measure comparable across countries, we scale the raw counts by the total number of words in each report. An increase in the index indicates that uncertainty is rising, and vice versa.

Our results reveal two key facts:

First: Yes, uncertainty in systemic economies matters for uncertainty around the world.

Second: Only the United States and the United Kingdom have significant uncertainty spillover effects, while the other systemic economies play a little role, on average.

Starting with the United States, the chart below displays the global (excluding the United States) average of the ratio of uncertainty related to the United States to overall uncertainty. It shows that uncertainty related to the United States has been a key source of uncertainty around the world since the past few decades

For instance, during the 2001–2003 period, U.S.-related uncertainty contributed to about 8 percent of the uncertainty in other countries—about 23 percent of the increase in global uncertainty from the historical mean. n the last 4 years, U.S.-related uncertainty has contributed to about 13 percent of uncertainty in other countries—with peaks of about 30 percent—and approximately 20 percent of the increase in global uncertainty from historical mean.

#### Econ *stability* structurally dampens multiple existential risks

* Extinction via Great Power Conflicts;
* Extinction via engineered pandemics ;
* Extinction via Nuclear war

Ord ‘20

Toby Ord is a Senior Research Fellow at the University of Oxford's Future of Humanity Institute, where his work is focused on existential risk. Toby founded Giving What We Can, an international society whose members pledge to donate at least 10% of their income to effective charities, and is a key figure in the effective altruism movement, which promotes using reason and evidence to help the lives of others as much as possible. Ord holds a B.Phil., and a D.Phil. from the University of Oxford - From the book: The Precipice: Existential Risk and the Future of Humanity - From PART THREE: THE PATH FORWARD, chapter 6. “The Risk Landscape” – published March 2020 - available via google books.

While I've presented this analysis in terms of which risks should get the highest priority, these exact same principles can be applied to prioritizing between different risk factors or security factors. And they can help prioritize between different ways of protecting our potential over the long term, such as promoting norms, working within existing institutions or establishing new ones. Best of all, these principles can be used to set priorities between these areas as well as within them, since all are measured in the common unit of total existential risk reduction.

In the course of this book, we have considered a wide variety of approaches to reducing existential risk. The most obvious has been direct work on a particular risk, such as nuclear war or engineered pandemics. But there were also more indirect approaches: work on risk factors such as great-power war; or on securitv factors such as a new international institution tasked with reducing existential risk. Perhaps one could act at an even more indirect level. Arguably risk would be lower in a period of stable economic growth than in a period with the turmoil caused by deep recessions. And it may be lower if citizens were better educated and better informed.

#### Independent FTC action means fewer of them. Plan and perm can’t solve - they permit *private causes of action* and *boost error rates* via court reviews OR non-FTC investigations.

Crane ‘10

Daniel A. Crane - Professor of Law, University of Michigan. “Reflections on Section 5 of the FTC Act and the FTC's Case Against Intel” - The CPI Antitrust Journal (Competition Policy International) – February, 2010, (2) - #E&F - https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2369&context=articles

The FTC Act gives the Commission a seemingly simple mandate: Detect and prohibit “unfair methods of competition . . . and unfair or deceptive [trade] practices.”4 The Commission’s powers under Section 5 are at least co-extensive with the substantive reach of the Sherman Act—in other words, that anything that is illegal under the Sherman Act is also illegal under the FTC Act.5 But the Supreme Court has also held that the FTC may go further than the Sherman Act and “stop in their incipiency acts and practices which, *when full blown*, would violate those Acts.”6 Thus, “the standard of unfairness under the FTC Act . . . encompass[es] not only practices that violate the Sherman Act and the other antitrust laws . . . but also practices that the Commission determines are against public policy for other reasons.”7

There are compelling reasons to allow the FTC an independent norm-creation role in antitrust.8 Over the past several decades, the courts have sharply constricted antitrust liability norms under the Sherman Act largely out of a reaction to the dangers and abuses of private antitrust litigation, which outnumbers public antitrust enforcement (at both the FTC and Department of Justice) by a 10-1 ratio.9 Among these real or perceived dangers and abuses are the chilling effects of automatic treble damages and one-way fee-shifting, the damagescompounding effects of easy class certification, strategically-minded competitor plaintiffs, discovery run amok, and generalist judges and unsophisticated juries who create inconsistent and incoherent industrial policy.10 Reacting to these perceived infirmities in the institutional structure of private antitrust litigation, the federal courts (led by the Supreme Court) have contracted the Sherman Act’s substantive liability norms. While such contraction may be justified to mitigate the systemic risks of private litigation, to the extent that the government sues under the same statute a perhaps unintended side effect has been to stymie public litigation.

The Justice Department has no means of avoiding this difficulty—it can only enforce the Sherman and Clayton Acts. The FTC, however, need not tie itself to the Sherman Act. Indeed, it has no power to enforce the Sherman Act, but only the FTC and Clayton Acts. If it so chooses, it may declare that it is enforcing the Sherman Act as incorporated into the FTC Act through judicial decision, but then it appropriates all of the baggage of private litigation as expressed in contracted liability norms.

#### Error rates are *the worst of both worlds* – false positives and false negatives crush econ AND kill compliance with the Aff.

* Resolves all Aff offense vs. the CP related to “underdeterrence” bc…
* …under-deterring doesn’t map onto a world with error rates in the investigation and enforcement stages. Those errors can invite “false positive” non-compliance for the Aff.

Baker ‘15

Jonathan B. Baker - Professor of Law, American University Washington College of Law. “TAKING THE ERROR OUT OF “ERROR COST” ANALYSIS: WHAT’S WRONG WITH ANTITRUST’S RIGHT” - 80 Antitrust Law Journal No. 1 (2015) - #E&F – continues to footnotes #18 and #19 – no text removed. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2333736

The error cost perspective evaluates antitrust rules—whether considered individually or as a whole—based on whether they minimize total social costs. The relevant costs include costs of “false positives” (finding violations when the conduct did not harm competition), costs of “false negatives” (not finding violations when the conduct harmed competition), and transaction costs associated with use of legal process.17 False positives and false negatives are harmful to the economy as a whole for reasons that go beyond the conduct in the case under review:18 False positives and false negatives may chill beneficial conduct by other economic actors (potentially in other industries) that must comply with the rule; these errors may also fail to deter harmful conduct by other economic actors to which the same rule would apply. False positives and false negatives do not neatly map to overdeterrence and underdeterrence, respectively, however, because the deterrence consequences of legal errors depend in part on the way that those errors affect the marginal costs and benefits of conduct undertaken in the shadow of the law19.

FN18 - From an economic perspective, antitrust rules benefit society primarily by deterring harmful conduct. See generally Jonathan B. Baker, The Case for Antitrust Enforcement, J. ECON. PERSP., Autumn 2003, at 27; cf. Louis Kaplow, Burden of Proof, 121 YALE L.J. 738 (2012) (highlighting a tradeoff between the benefits of deterrence and costs of chilling beneficial conduct that arises when the burden of proof in adjudication is set to maximize social welfare). Accordingly, the evaluation of error costs must ~~look to~~ (consider) the consequences of the decision or legal rule for conduct by other firms, not simply to the incidence of the decision on the parties to the case. For example, restricting analysis to the parties before the court would yield the misimpression that draconian punishments for parking in front of a fire hydrant will eliminate error costs. The prospect of such punishments would lead to 100% compliance with the no-parking rule, so there would be no court cases, no possibility for a court erroneously to convict or acquit a defendant, and no litigation expenditures. Yet such punishments would also chill parking in front of a hydrant when its social benefits (e.g., allowing a doctor to arrive in time to save a life) would outweigh its social costs. Such punishments would also discourage socially beneficial parking near hydrants (by drivers who fear that an aggressive parking enforcer would wrongly conclude that the hydrant is blocked and that a court would uphold the ticket). Restricting analysis to the parties before the court would yield the same misimpression with respect to an enforcement policy taken to the opposite extreme: A complete absence of enforcement of the rule prohibiting parking in front of hydrants would also lead to no court cases, and so would generate no judicial errors and no transaction costs of litigation. Yet such a rule would not deter parking in front of hydrants when the social cost (the cost of impeding fire department access in the event of a fire discounted by the probability that a need for access would arise) would exceed the social benefit.

FN19 See generally Warren F. Schwartz, Legal Error, in 1 ENCYCLOPEDIA OF LAW AND ECONOMICS 1029 (Boudewijn Bouckaert & Gerrit De Geest eds., 2000). For example, a rule change that increases the frequency or cost (penalty) of false positives may increase deterrence, but it could also do the reverse. The latter may occur if more false positives mean that firms no longer obtain enough benefit from staying within the line separating legal and illegal behavior to justify being careful. For this reason, uncertainty about a rule or its application can reduce compliance. See generally Hendrik Lando, Does Wrongful Conviction Lower Deterrence?, 35 J. LEGAL STUD. 327, 329–30 (2006) (providing a simple technical example); Richard A. Posner, An Economic Approach to the Law of Evidence, 51 STAN. L. REV. 1477, 1483–84 (1999) (greater accuracy in judicial determinations increases the returns to compliance with legal rules); Steven C. Salop, Merger Settlements and Enforcement Policy for Optimal Deterrence and Maximum Welfare, 81 FORDHAM L. REV. 2647, 2668–69 & 2669 n.60 (2013) (a firm’s incentive to comply with a rule may fall identically when the probability of either type of error increases).