# Neg vs. Boston College WC- ADA Round 6

# 1NC

## Section 5 CP

#### *Next off – Section 5:*

#### Text:

The FTC should issue clear enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes Major League Baseball. The FTC should release a policy 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.

## Congress CP

Plan: The United States Supreme Court should overrule the precedent in Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, Toolson v. New York Yankees, and Flood v. Kuhn by expanding the scope of the Sherman Act to apply to Major League Baseball.

#### Counterplan:

#### The United States Congress should legislatively override the precedent in Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, Toolson v. New York Yankees, and Flood v. Kuhn by expanding the scope of the Sherman Act to apply to Major League Baseball.

#### Counterplan solves case – BUT avoids the plan’s retroactive liability – that bankrupts MLB, turning the entire case

Grow 15 (Nathaniel Grow, Associate Professor of Business Law and Ethics and the Yormark Family Director of the Sports Industry Workshop, “Baseball’s Antitrust Exemption: A Primer,” FanGraphs, 6-4-2015, <https://blogs.fangraphs.com/baseballs-antitrust-exemption-a-primer/>)

Although some fans mistakenly think Congress granted baseball its antitrust exemption, the immunity really results from a nearly 100-year-old decision by the U.S. Supreme Court in a lawsuit arising out of the last on-field challenge to the American and National leagues’ dominance over the sport. Back in 1914 and 1915, the Federal League of Professional Baseball Clubs tried to establish itself as a third major league by signing roughly 50 major league players away from their then-current teams – the most notable of which was probably Hall-of-Fame shortstop Joe Tinker.

When the Federal League failed to make sufficient headway with the baseball public during the 1914 season, it turned to a different tactic, filing a first-of-its-kind federal antitrust lawsuit against the major leagues in January 1915. The case was heard by Judge Kenesaw Mountain Landis – the future first commissioner of baseball – who ultimately opted to sit on the matter for more than a year in the hope he would not have to resolve the dispute. (As I recently explained at The Hardball Times, Landis thought any decision he issued in the case would be destructive to the national pastime, and thus harm all of the parties involved in the case.)

Landis’ wish was ultimately granted when seven of the eight Federal League teams agreed to cease their operations in December 1915 in exchange for various concessions from MLB. The Federal League’s Baltimore Terrapins, however, decided to fight on and filed its own antitrust lawsuit against the two major leagues (i.e., the so-called Federal Baseball case). The Terrapins alleged the major leagues had illegally monopolized the baseball industry in various ways, including by driving the Federal League out of business.

Baltimore won at the trial court level, but lost on appeal. The suit eventually reached the U.S. Supreme Court in 1922, where, in a unanimous decision, Justice Oliver Wendell Holmes, Jr. ruled that professional baseball was not subject to the Sherman Antitrust Act. Because of that, the American and National Leagues could not be held legally liable for monopolizing the industry. In particular, Holmes held that MLB was not engaged in “interstate commerce,” and therefore did not fall within the scope of the Sherman Act.

Holmes’ ruling in Federal Baseball has been heavily criticized. Many fans remain perplexed by how Holmes could conclude that baseball was not engaged in interstate commerce. Not only was professional baseball already a big business in 1922, but MLB teams also repeatedly traveled across state lines to play games.

As I’ve argued in my recent book on the Federal Baseball lawsuit, the Court’s ruling in the case was actually quite defensible at the time. Back in the 1920s, federal courts typically interpreted the phrase “interstate commerce” quite narrowly. In particular, courts defined “commerce” differently than they do today, typically limiting the term to apply to only those activities related to the production or distribution of physical goods. Because MLB teams produced no physical products, but instead only played ephemeral games in a single state, the Court could reasonably determine professional baseball was not engaged in interstate commerce and thus was not subject to federal antitrust law.

More than 30 years would pass before the Supreme Court was again asked to consider baseball’s status under antitrust law. In Toolson v. New York Yankees, a minor league pitcher in the Yankees’ farm system challenged baseball’s reserve clause – which, in the days before free agency, effectively gave MLB teams control over their players’ services for the entire length of their careers – under the Sherman Act.

At the time, many anticipated that the court would strip baseball of its antitrust immunity in the Toolson case. Not only had the Supreme Court dramatically modernized its definition of interstate commerce during the three intervening decades – expanding the term to encompass almost all business activity – but the business of baseball was itself more clearly engaged in interstate commerce by the 1950s due to its greater reliance on television and radio broadcasting. Contrary to these expectations, the Court affirmed the baseball exemption by a 7-to-2 vote.

In its one-paragraph opinion, the Toolson Court provided two main justifications for maintaining baseball’s antitrust immunity. First, the majority noted that Congress had been aware of the Federal Baseball ruling for 30 years, but yet had not taken any steps to apply the antitrust laws to MLB. Indeed, Congress had just held extensive hearings regarding baseball’s antitrust status about a year before the Toolson case reached the Supreme Court, hearings that concluded without the passage of any legislation subjecting MLB to the Sherman Act. This suggested the legislature may have intended for baseball to remain protected from antitrust law.

Second, the Court feared that any decision reversing baseball’s antitrust immunity would unfairly subject the sport to retroactive liability, holding MLB legally accountable for activity that it had reasonably believed was beyond the scope of the antitrust laws. Because any monetary damages in federal antitrust suits are tripled, the Court may have even feared that MLB could potentially be driven into bankruptcy if countless current and former players affected by the reserve clause were freed to file their own antitrust lawsuits against the league. In light of Congress’s inaction and these retroactivity concerns, the Toolson opinion closed by declaring that any change to baseball’s antitrust exemption should come from the legislature, not the judiciary.

This conclusion wasn’t entirely unreasonable. Unlike the Supreme Court – which typically rules only by issuing decisions that apply retroactively – Congress can enact legislation that would apply strictly on a going-forward basis. Thus, unlike the judiciary, Congress could repeal the baseball exemption without triggering concerns about holding MLB retroactively liable for activity that had previously been considered beyond the scope of the law.

The Supreme Court reevaluated baseball’s antitrust status for the third and – to date – final time in 1972 in Flood v. Kuhn. As in Toolson, the Flood suit involved a challenge to the reserve clause, this time by former All-Star center fielder Curt Flood, who objected to being traded against his will from St. Louis to Philadelphia. Flood and the Major League Baseball Players Association hoped the case would help pave the way towards introducing free agency to professional baseball.

Although some commentators yet again anticipated that the Supreme Court would overturn baseball’s antitrust exemption in Flood, the Court once more affirmed MLB’s immunity, this time by a 5-to-3 vote (Justice Lewis Powell did not participate in the case because he owned stock in Anheuser-Busch, the then-parent company of the St. Louis Cardinals). Despite acknowledging that MLB was engaged in interstate commerce and that baseball’s exemption was “an exception and an anomaly” – following Toolson, the Court had refused to extend the same immunity to either the National Football League or National Basketball Association – a majority of the Supreme Court nevertheless decided to defer to the prior precedent in light of the Congressional inaction and retroactivity concerns identified in Toolson.

Thus, although some fans think Curt Flood prevailed in the case, he actually lost the suit. Instead, MLB players would achieve the right to free agency a few years later via arbitration, not litigation.

Baseball’s antitrust exemption has not been seriously challenged in the courts in the more than four decades since the Flood case was decided (although that could change if the Supreme Court agrees to hear the pending appeal in the suit filed by San Jose against MLB). Meanwhile, Congress waited 26 more years before it finally heeded the Court’s call to action by addressing baseball’s exemption.

In the Curt Flood Act of 1998, Congress partially repealed MLB’s antitrust immunity, but only to allow current MLB players to file antitrust suits against the league. The Act was the result of a compromise between MLB and the MLBPA following the 1994 players’ strike, in which both sides agreed to seek a limited repeal of the exemption in order to place baseball players on the same legal footing as those in the other U.S. professional sports leagues. Because the Flood Act goes on to state that it “does not change the application of the antitrust laws in any other context,” however, baseball’s immunity otherwise remains largely intact today.

## FTC Independence DA

#### *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

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 – No text omitted – but the Table of Contents – which comes after the Abstract - was not included – modified for language that may offend - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

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

#### No rollback --- Courts primed to revoke Baseball antitrust --- just need the case

Solomon 21 --- Aron Solomon, JD, is the Head of Strategy and Chief Legal Analyst for Esquire Digital, as well as the Editor for Today’s Esquire “In NCAA v. Alston, the Supreme Court Also Hits a Home Run for Minor Leaguers”, Today’s Esquire, June 28, 2021, https://www.todaysesquire.com/2021/06/28/in-ncaa-v-alston-the-supreme-court-also-hits-a-home-run-for-minor-leaguers/

The MLB antitrust exemption was the product of a 1922 Supreme Court holding that the business of Major League Baseball did not constitute “interstate commerce,” thus making it exempt from the Sherman Act, which prevents businesses from conspiring with one another in an effort to thwart competition.

Marino observes that the removal of Major League Baseball’s antitrust exemption would immediately change the dimensions of the playing field:

“This would stop MLB teams from colluding on Minor League contracts and would lead to an open market for the services of Minor League players. Because of the antitrust exemption, MLB teams are legally permitted to impose a Minor League Uniform Player Contract (UPC) on players. The UPC ties players to the team that drafts them for 7 seasons. This year, the standard salary at each level of the Minors is somewhere between $400 and $700 per week. While the UPC requires players to perform services 12 months per year, it dictates that players only receive a salary 6 months per year (and in some cases even less often).”

It is worth noting that some Republicans threatened MLB’s antitrust exemption after the League moved the All-Star Game from Atlanta in response to Georgia’s voter suppression laws, but that seems to have been a tempest in a teapot, with absolutely no concrete movement after what was clearly a hollow threat.

Yet just this Monday, in deciding NCAA v. Alston, the Supreme Court, in a 9-0 decision, held that the NCAA violated federal antitrust laws by limiting the amount of education-based compensation available to college athletes. Advocates for Minor Leaguers had filed an amicus brief in Alston, urging the Court not to exempt the NCAA from antitrust scrutiny, pointing out the parallels between the treatment of NCAA athletes and the treatment of Minor League baseball players.

However, according to Marino, two passages from Alston are clear indicators that this Court is ready to revisit baseball’s antitrust exemption, which could breathe its ultimate breath as early as the October 2021 Supreme Court term if a worthy case is presented and accepted for review. There is honestly no way to overemphasize the importance of the Court’s language when viewed through a legal lens:

To be sure, this Court once dallied with something that looks a bit like an antitrust exemption for professional baseball. In Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs,259 U. S. 200 (1922), the Court reasoned that “exhibitions” of “base ball” did not implicate the Sherman Act because they did not involve interstate trade or commerce—even though teams regularly crossed state lines (as they do today) to make money and enhance their commercial success. Id., at 208–209. But this Court has refused to extend Federal Baseball’s reasoning to other sports leagues—and has even acknowledged

criticisms of the decision as “‘unrealistic’” and “‘inconsistent’” and “aberration[al].” Flood v. Kuhn, 407 U. S. 258, 282 (1972) (quoting Radovich v. National Football League, 352 U. S. 445, 452 (1957)); see also Brief for Advocates for Minor Leaguers as Amicus Curiae 5, n. 3 (gathering criticisms). Opinion at 23.

and

Whether an antitrust violation exists necessarily depends on a careful analysis of market realities. . . . If those market realities change, so may the legal analysis. Opinion at 21.

As Marino pointed out in a press release sent hours after the decision, the Court’s language in this case is critically important:

“First, the Court talked about it in the past tense. Second, the Court refused to even call it an exemption. And third, the Court clarified its willingness to overturn an antitrust ruling if the facts on the ground have changed. In the nearly 50 years since the Supreme Court last considered baseball’s antitrust exemption, the value of the average MLB franchise has increased by orders of magnitude, while the average Minor League salary has failed to even keep pace with inflation. Based on that fact alone, no reader of today’s opinion could have confidence that MLB’s treatment of Minor Leaguers will remain immune from antitrust scrutiny for long.”

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

Nam ‘18

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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”.

## Court Politics DA

#### They have given us the link- they give Roberts the legitimacy that gaves him the cover to allow conservative justices looser leashes

#### SCOTUS will moderate their decision in Dobbs to avoid overruling Roe and appear moderate

Cohen 21 – [David S. Cohen - associate professor at the Drexel University School of Law, Dahlia Lithwick – courts and law writer at Slate, July 28th 2021, “Roe v. Wade Is Now in the Hands of the Three Trump Justices”, <https://slate.com/news-and-politics/2021/07/mississippi-roe-challenge-barrett-kavanaugh-gorsuch.html>, eph]

One of the most interesting fissures that has opened up within the conservative legal movement in recent years has been between mainstream conservative lawyers and the growing performance artist faction of the lawyers for the Trump base. Soon, the conservative justices themselves will have to pick which side of the battle they are on: With the filing last week of a brief that explicitly asks the Supreme Court to overturn Roe v. Wade, the state of Mississippi is forcing the court’s three newest Trump-appointed justices to choose between institutional stability and law that channels right-wing internet memes. Examples of the latter abound in the past year. Rudy Giuliani has seen his license to practice law temporarily suspended—twice!—as a result of his star turns as all-purpose lawyer for crazy stuff. Last December, 17 Republican attorneys general signed a brief supporting a suit filed by Texas Attorney General Ken Paxton seeking to set aside the 2020 election based on false claims of “unconstitutional irregularities.” The chief law enforcement officers of those 17 states actually asked the Supreme Court to throw out every vote in the four consequential states in which Joe Biden had prevailed—Georgia, Michigan, Pennsylvania, and Wisconsin—and then have each state’s legislature declare Donald Trump the winner. Another exhibit might be the various lawsuits filed by Trump’s “Kraken” lawyers Lin Wood and Sidney Powell, who currently face the prospect of legal sanctions for their work advancing his bogus claims of a stolen election. Fitch’s brief represents an astoundingly maximalist theory of ignoring precedent, claiming that “the stare decisis case for overruling Roe and Casey is overwhelming.” Calling Roe v. Wade “egregiously wrong” (five times!), the brief asks the court to simply overturn every abortion rights decision made over the course of half a century. The casual trolling is indeed epic. Justice Ruth Bader Ginsburg, who dedicated her life to protecting women’s reproductive rights, is invoked to support the proposition that Roe and Casey “have inflicted significant damage” upon the country. The brief blames Roe for creating a national culture war that was in fact produced almost singlehandedly by Pat Buchanan, Phyllis Schlafly, and Nixon strategist Kevin Phillips. It contends that Roe and Casey and their progeny are not really precedent because they were fractured opinions. It argues that “abortion jurisprudence has harmed the Nation.” The brief even cites one of us (Lithwick) to support its claim that abortion is so contentious that it must be returned to the states to decide, without interference from the federal government. Trolly. Just over one year ago, the Supreme Court struck down a Louisiana law that would have reduced the number of clinics in the state to one, and five years ago, the court struck down a Texas law that would have cut the number of clinics in the state by three-quarters. In neither of those cases did the state attorneys general, both outspoken, politically motivated, anti-abortion conservatives, urge the court to use the lawsuit to overturn Roe. So what changed? Several things. For one, the Mississippi law at issue in this case is one of a new breed of extreme anti-abortion laws that have swept the nation in the past two years. Despite the fact that fetal viability is currently set at between 23 and 24 weeks, states have been banning abortion at 15 weeks (Mississippi, in this case), 12 weeks (Arkansas), 8 weeks (Missouri), 6 weeks (Ohio, Georgia, and seven others), and at conception (Alabama, Louisiana, Utah). In other words, these new laws are rooted not in state solicitude for public health, but in a desire to end legal abortion. Dobbs is the first case to arrive at the Supreme Court addressing these direct attacks on Roe. Beyond that, the most essential change here is that Trump struck Republican gold during his presidency and was able to appoint three new Justices to the court. All three—Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett—were established conservative jurists at the time they were elevated to the court, but by being appointed by Trump, and sometimes with some discomfort, their reputations and careers became reoriented as Trump loyalists. Since Trump stated that one of his chief goals in his court appointments was to appoint justices who would overturn Roe, Fitch received the precise message a loyal Trump soldier was sent loud and clear—send these justices a Trump-inspired brief that will appeal to the Trump moment. And that she did. What she may have missed is how hard the three Trump justices have labored to show the country that they are not partisans, not shoddy hacks, and not the brazen political actors their party promised. Just as the last term showed that, in some areas, minimalism and moderation were to be the lodestars of, at minimum, Barrett and Kavanaugh, Fitch served up a giant partisan fireworks display that would benefit her own image and career more than the Trump justices’. But perhaps that was the intended purpose. Her Trump-stylized arguments certainly garnered immense attention for Fitch last week. Whether it further inclined the Supreme Court to grant the relief she sought is a much harder question. So far on the court, the Trump three have been reliable conservative votes, but they have not completely walked the party line. Gorsuch wrote the pivotal decision in 2020 giving LGBTQ people equal rights in the workplace; Kavanaugh is now the court’s median justice and cited something akin to the public perception of critical race theory in his opinion supporting college athletes against the NCAA; and Barrett stopped short of overturning a precedent about religious liberty that has been in conservative crosshairs for decades. These three are conservatives, there’s no two ways about it. But, are they bomb-thrower justices, like Samuel Alito and Clarence Thomas? Or are they justices prone to taking less visible, headline-eluding smaller steps to accomplish larger conservative goals while still paying some respect to half a century of precedent? That’s the choice before them now that Mississippi has so clearly thrown down the gauntlet. Abortion rights activists who seek to see Roe ended outright celebrated the in-your-face-ness of the AG’s filing. Several argued that there was no other avenue for Mississippi and applauded the candor of a brief that no longer covered itself in fabrications about the real goals of the anti-choice movement. But, there is at least some reason to doubt that there are five, let alone four, or even three votes, at the high court for an in-your-face reversal of Roe just weeks before the 2022 midterm elections. It will be up to the Trump justices to decide just how much they side with the church of Trump, instead of the institution of the Supreme Court.

#### Judicial antitrust enforcement is politicized – the aff’s liberal ruling causes strategic voting

Ventoruzzo 15 – [Marco Ventoruzzo - Full Professor of Business Law at Bocconi University in Milan and Full Professor of Law at Penn State Law School, 2015, “Do Conservative Justices Favor Wall Street: Ideology and the Supreme Court's Securities Regulation Decisions”, <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1277&context=fac_works>, eph]

C. Ideology in the Supreme Court's Securities Regulation Decisions

Probably the best evidence that political ideology can play a role in the area of securities regulation is the set of rules concerning the composition of the Securities and Exchange Commission (SEC). Section 4(a) of the 1934 Exchange Act sets forth that the SEC should be composed of five members appointed by the President with the "advice and consent" of the Senate, but also requires that "[n]ot more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as may be practicable."8 ° The statutory call for a bipartisan SEC indicates that regulation and enforcement activities concerning the financial markets can be subject to diverging philosophies along political lines.8 1 It is obviously impossible here to fully discuss the general economic tenets of conservative and liberal policies with respect to the regulation of financial markets. General intuition, noted above, is that ''conservative" views of economic policy emphasize the efficacy of markets over government intervention and regulation, while for liberals the position is reversed. The consequence is that conservatives tend toward deregulation based on the conviction that market failures rarely justify protections for perceived weaker parties in a private transaction. Liberals, on the other hand, are more skeptical about the virtues of free markets and believe that regulation should curb the possible inefficient and inequitable outcomes of laissez-faire market operation.8 2 In short, the former tend to be more "pro-business," the latter more "pro-investor." 83 An illustration of this possible political divide is the legislative history of the so-called Private Securities Litigation Reform Act of 1995.84 In the 1990s, there was a growing concern that frivolous securities lawsuits could arise as attorney-driven class actions, in particular invoking section 10(b) and Rule lOb-5 of the Exchange Act, forcing defendants to settle in light of the potential costs of discovery.8 5 Congress created this piece of legislation to curb such a phenomenon through different measures like raising the pleading standards.86 In order to survive a motion to dismiss, a plaintiff had to plead false statements "with particularity," and that pleading had to create a "strong inference" of scienter, one of the elements of a Rule lOb-5 cause of action; in addition, the court granted a "stay of discovery" before the decision on the motion to dismiss. 87 Congress enacted the bill into law over a veto by President Bill Clinton.88 Numerous Democratic representatives voted in favor of the law,89 but the diverging views of President Clinton and Congress evoke the traditional dividing line between liberals and conservatives in this area. This Section briefly addresses the room for policy consideration- politics-in the enforcement of the securities laws. The intent is not to offer a comprehensive account of the degree of freedom that courts have in the interpretation of all the provisions of the securities laws, but more simply to give a flavor of the possible different interpretations of the relevant statutes that a particular set of beliefs concerning the proper scope of the regulation might influence. To begin, note that the U.S. securities laws enacted in the 1930s were among the first modem regulations of the financial industry, and they have served as a model for several foreign jurisdictions.90 These laws, however, apply to one of the most dynamic and innovative industries. Inevitably, enforcing the existing rules to the ever-evolving factual circumstances that characterize this sector leaves wiggle room for different policy considerations. A good starting point is the scope of the securities laws. The definition of "security" that triggers the obligation to register and disclose information, as well as the availability of specific private causes of action designed to protect investors, is broad but also vague. For example, consider the notion of what constitutes an "investment contract" set forth in section 2 of the Securities Act (and section 3 of the Exchange Act) that the Supreme Court had to define on various occasions. 91 Another crucial area concerns the availability of private causes of action to plaintiff-investors allegedly harmed by false, misleading, or incomplete statements in the purchase or sale of securities and the burden of proof that they must satisfy to prevail.92 Furthermore, in several cases, the remedies granted to plaintiffs are based on private causes of action implied by the courts and not explicitly regulated by the legislature, most notably section 10(b) and Rule lOb-5 of the Exchange Act. In these instances, significant interpretative latitude exists. Consider, for example, problems such as the need to prove reliance vis-h-vis the fraud-on-the- market theory, the scienter requirement, or the extension of liability to aiders and abettors.93 The extension of the insider-trading prohibition, a rule largely created by courts, is another area in which different ideological perspectives might affect the decision-making process.94 Conservatives and liberals also often have divergent views about the powers of the government (i.e., the SEC) to enforce the law, particularly the securities laws. For example, some interesting cases in this respect deal with the burden of proof that the SEC must satisfy to establish a violation of the securities laws.95 Rulings on takeover regulation also might indicate different policy preferences of the Justices. These cases, however, show the difficulty of properly coding certain decisions as pro-business or pro-investor, a problem that more generally affects the analysis undertaken later in this Article.96 On one hand, it is possible to argue that takeovers, and more specifically hostile tender offers, favor investors by allowing them to sell their shares at a premium over market prices. On the other hand, some tender offers may not be value-maximizing, and in this case to allow the target corporation, as well as its controlling shareholders and managers, to resist an inadequate or coercive offer could be in the best interest of shareholders. In any case, the proper role of the market for corporate control and how to create a level playing field for bidders and targets in the takeover context are also areas where there is room for competing policy considerations. 97 In addition, litigation concerning the constitutionality of state antitakeover statutes is instructive as to the position of the Supreme Court on issues relating to the relative powers of the federal government and the states in regulating commerce, an area that implicates the politically charged question of the role of the federal government.9" The legislature resolved some of the controversies mentioned above, and the Court unanimously finds this, easy solution. Even assuming that ideological preference might be embedded in their decision-making, judges and, to a lesser but not unsubstantial extent, Supreme Court Justices face several constraints while speaking from the bench: Sometimes statutes and regulations are fairly straightforward and do not leave room for policy considerations; Lower judges might desire not to be reversed on appeal; 99 Fear of "government retaliation" might play a role (in the sense, for example, that striking down a statute might lead the legislature to introduce other measures that the Justice opposes); And public opinion might unconsciously influence them. There are, however, several "hard cases" where the solution does not seem to appear in either the Constitution or in statutory or case law. These hard cases leave room for the different policy approaches of the decision maker, as also indicated by the practice of dissenting opinions. This Article proposes that by examining a significant number of cases, it is possible to detect economic policies preferred by the Justices. In short, there are problems in the area of securities regulation in which ideology can play a role, considering the indeterminacy of the applicable laws.

II. AN OVERVIEW OF EXISTING LITERATURE ON THE ROLE OF IDEOLOGY IN JUDICIAL DECISION-MAKING

This Part begins by discussing the different ways to measure the elusive concept of ideology. Then, after considering the ideology of the Justices, this Part explores the correlation between that Justices' ideology and the way they vote on different decisions. A. Measures of Justices' Ideology One of the interesting and challenging problems of any study that investigates the correlation between the "ideology" of Supreme Court Justices and their voting patterns is how to precisely code such an ambiguous and elusive concept as the ideology of each Justice. There are three major techniques used in the political and legal literature to attribute a position to Justices (and lower court judges) on the political spectrum: (1) the party of the appointing president; (2) the Segal-Cover scores; and the (3) Martin-Quinn scores. The first two are "ex ante" measures because they classify the Justices based on proxies for their ideology measured before their tenure on the bench, and they remain static for the entire period the Justices work on the Court. The last one is an "ex post" measure, ranking Justices from liberal to conservative based on their actual voting in published opinions. The party of the appointing president is probably the most common measure used to code the political affiliation of Justices. This measure is based on the assumption that Republican presidents will appoint conservative Justices and Democratic ones will appoint liberal Justices. It has several advantages: "it is unambiguous, . . . easy to [apply and] understand."' 00 It also raises a separate issue: to what extent presidents are able to effectively influence the activity of the Court. This measure, however, also has some clear drawbacks. The first drawback is that, as with all ex ante measures, the measure is static and does not take into account the possibility (indeed, the likelihood) that some Justices might change their ideological position during their often long tenure, as mentioned above.' 01 In fact, empirical literature suggests that most Justices "drift" in their position on the ideological spectrum throughout their years on the bench.10 2 This variable is also problematic because it assumes that all Republican presidents are conservative and that all Democratic ones are liberal, or at least that they are all conservative or liberal in the same way, which is clearly not true. An interesting study ranked the U.S. presidents from Franklin Roosevelt to Bill Clinton based on their social and economic liberalism.' 0 3 The ranking is based on a 1995 survey of a random group of political scientists, and the results-used in this Article's empirical analysis-are as follows (100 being extremely liberal and 0 extremely conservative): In addition, not all presidents want or can appoint a Justice who precisely mirrors their views. 10 4 Other considerations might affect the decision, such as the need to take into account the geographical origins of the candidate and-especially in more recent years-the need to create a diverse Court in terms of gender and race to appeal to part of the electorate (consider President Ronald Reagan's appointment of Justice Sandra Day O'Connor or President Barack Obama's appointment of Justice Sonia Sotomayor). Political and party necessities can influence the President: for example, senators can play a role in the selection, especially the senator of the same party as the President from the state of the nominee, though this is more likely to occur in the selection process for the lower federal courts and is probably less relevant in Supreme Court nominations. Finally, the President can make a mistake in assessing the position of the appointee on the political spectrum,' 0 5 or simply may not care so much. Notwithstanding these caveats, this Article uses the party of the appointing president as one proxy for the ideology of the Justices, for the reasons indicated above. A second very common measure for the ideology of Supreme Court Justices is the so-called Segal-Cover index.' 0 6 This is also an ex ante measure that ranks Justices on a conservative-to-liberal spectrum based on a content analysis of editorials published in two liberal and two conservative newspapers about the nominees in the period from their nomination to their confirmation.'0 7 In its original formulation, to determine the Segal-Cover index, each paragraph of an article receives a score: +1 if it indicates a liberal attitude of the candidate, 0 if a moderate one, or -1 if a conservative one. The position of the Justice is measured according to the following formula: In the above formula, "1" is the number of paragraphs indicating a liberal ideology, "c" is the number of paragraphs indicating a conservative ideology, and "total" is the total number of paragraphs. Results can vary between -1 (extremely conservative) and +1 (extremely liberal). In line with other studies, this Article has renormalized the score from 0 (conservative) to 1 (liberal). 10 8 However, the Segal-Cover index is not devoid of shortcomings. Like the Republican/Democratic appointing president variable, the SegalCover index is static and does not consider changes in the Justice's attitudes. A specific bias of this index is that the policies and preferences of the newspaper influence op-ed pieces on prospective Justices. For example, there are certain issues that might receive more emphasis than others, e.g., social issues versus economic ones. In addition, the newspaper can influence the length of the article and therefore affect the balance between paragraphs emphasizing a conservative or a liberal inclination.109 This methodology does not take into account other possible important sources that indicate the ideology of a Justice, from scholarly articles to books published before the nomination. 110 Professors Lee Epstein, William Landes, and Richard Posner have created a more comprehensive index that also considers these elements, but this Article does not use it in this analysis. 11 Another possible bias of the Segal-Cover index is that, in the period between nomination and confirmation, the authors of the editorials might write "strategically"--trying to make a candidate appear more liberal and less self-restrained to enrage Republican Senators, for example. The Segal-Cover index is, however, popular in the literature, and it has the advantage of comporting with general scholarly evaluations of the Justices.112 In addition, unlike the party of the appointing president, the Segal-Cover index ranks the Justices on a continuous scale from -1 to + 1 (or from 0 to +1), offering a more nuanced measure of the position of the Justices and allowing for more precise correlations. The most important ex post proxy of the ideology of the Justices is the Martin-Quinn index. 113 It is based on a classification of the actual votes of the Justices during their terms, adjusted to take into account possible alignments among Justices, and it returns an "ideal point" representing a Justice's ideology in a space ranging from very liberal (-6.656) to very conservative (3.884).114 This proxy is useful because it accurately positions the Justices' ideology in different terms and therefore does not suffer from the static nature of ex ante measures. The major problem with this approach is its circularity or endogeneity. Arguably, this measure only shows that a Justice who usually votes conservative is more likely to vote conservative; it does not provide any information on the cases in which a Justice, perceived as liberal at the time of her appointment, voted more conservatively than expected.115 Removing cases on the particular issue researched and evaluating the correlation between the votes cast in other cases and those the research focuses on can partially mitigate this problem. For example, if one intends to test how Justices vote on First Amendment issues, one can factor in the votes cast in cases not dealing with First Amendment claims and verify if these votes predict how Justices will vote on First Amendment controversies. This Article's analysis of securities regulation decisions uses all these variables (the party of the appointing president, economic liberalism of the appointing president, Segal-Cover scores, and Martin-Quinn scores) to test the existence of a correlation between Justices' ideologies and their voting behavior. Combining the most commonly used measures will offer important and interesting insights on this Article's query. 11 6

B. Studies on the Correlation Between Ideology (and Other Factors) and Decisions

As examined above, the empirical literature of judicial behavior is vast.1 17 It would be difficult to provide here a complete account of the numerous studies published by political scientists and legal scholars in this broad area. This Article therefore limits its overview to some select works, pointing out in particular how the studies generally indicate a correlation between the ideology of Justices and judges and the way they vote. 118 One of the forerunners of empirical legal studies in this area was Professor C. Herman Pritchett, who in the 1940s started to keep track of the votes of the Supreme Court Justices, noting in particular the number of dissents and the allegiances among Justices sharing a political view. 19 The work of Professor Pritchett attracted a lot of interest as well as criticism, while several studies have confirmed his intuition that ideology plays a role in judicial behavior. The work of Professors Jeffrey Segal and Albert Cover offers a good illustration of the major results of this line of research. In their study, they find that ideology explains in a robust way (the correlation coefficient is 0.80) the aggregate voting behavior of the Justices. 120 Many other studies indicate a relationship between the policy preferences of the Justices and their voting. Ideology might play a role in the very selection of cases that the Supreme Court will hear. Studies have found that liberal Justices tend to grant certiorari more often when the lower court rendered a conservative opinion, and vice versa for conservative Justices. 121 This is particularly interesting considering that according to other studies, Justices want to hear cases they intend to reverse, and in fact empirical evidence indicates that between 1953 and 1994 the Supreme Court reversed the majority of the decisions it reviewed (61.3 %).122 Especially since the 1960s, conservative Justices have been proportionately voting to overturn more liberal precedents and strike down more liberal statutes, and the opposite is true for liberal Justices. 1 23 Other studies have shown an inclination of some Justices to vote for the defendants in criminal law cases if the litigation involves either statutory interpretation or Constitutional issues, which suggests coherence with a particular ideological view.124 At least one empirical study has also examined the interpretative techniques employed by the Justices-in particular their use of legislative history. According to its authors, not only are liberal Justices more likely than conservative ones to use this interpretative technique, but Justices are more inclined to refer to legislative history "when it favors their ideologically preferred outcomes.' 125 Another line of research investigates the sensitivity of the Supreme Court to external pressures, whether real or perceived. While these studies do not examine the role of ideology in the Supreme Court's decisions, they are relevant because they seem to confirm that Justices pay attention to extra-legal considerations, which might be a way that politics influence them. For example, one research study shows that when there is an ideological difference between the Court and Congress, the Court is less likely to invalidate a federal statute, which might be a concern for possible "retaliations" from Congress-either enacting a new statute with similar effects or other possible actions such as a reduction of the Court's budget. 126 More generally, other works find that the Justices are responsive to changes in the public opinion.' 27 Even more central to the topic of this Article is the finding that the Supreme Court reacts to the business cycle, for example by siding with the government in times of economic growth and tending to rule against it during economic downturns, but deferring to government efforts in times of crisis. 128 The instant empirical analysis has tested the hypothesis that Court decisions in securities regulation cases have some correlation with economic conditions.129 Scholars have conducted extensive research on lower court decisions, focusing on decisions of the federal courts of appeals. Of course, the institutional context is different in such cases. Federal judges can face more constraints than Supreme Court Justices in their decision-making for reasons that this Article has already mentioned (fear of reversal, hopes of elevation to a higher court, etc.). It is important to note, however, that even with respect to lower federal judges, there are strong indicia that ideology affects judicial decision-making. For example, judges close to the Democratic Party vote more consistently against corporations in antitrust cases and for unions in labor disputes.' 3 ° An article on the Chevron doctrine claims that "panels controlled by Republicans were more likely to defer to conservative agency decisions (that is, to follow the Chevron doctrine) than were the panels controlled by Democrats." ' 31 Similarly, "Democrat-controlled panels were more likely to defer to liberal agency decisions than were those controlled by Republicans."' 3 2 In addition, according to a study of the U.S. Court of Appeals for the Second Circuit, conservative Justices tend to align their votes with conservative judges, and liberal Justices and judges similarly align. 1 There is also evidence of constraints on judicial behavior and of strategic voting. District court judges are adverse to reversal, or at least to a high frequency of reversals, and in their voting they seem to take into account the policy preferences of the court that will hear an appeal. On average, judges appointed by a Democratic president tend to impose lower prison sentences if a mostly liberal court of appeals reviews them and longer ones if the appellate judges are mostly Republican. 134 Also, researchers have tested "panel effects": male judges seem more likely to vote for women in employment discrimination disputes if a woman is on the panel, 135 while white judges more frequently vote in favor of voting rights if a black judge sits on the panel.13 Researchers have also conducted important studies on state judges, especially to investigate the behavior of elected judges. Elected judges rule more frequently in favor of in-state plaintiffs and against out-of-state businesses than appointed judges, especially when the decision transfers wealth to the state. 137 Additionally, sentences in violent criminal cases are more severe if the judge is approaching reelection.' 38 Statistically, state supreme court justices are more likely to confirm death sentences when the electorate supports them. 139 This brief overview of some contributions indicates evidence that ideology informs judicial decisions and that judges take into account external variables like the panel composition, public opinion, Congress's political composition, fear of reversal, and economic cycles. The results of previous research make interesting and relevant the questions that this empirical analysis investigates in the next Part, in particular whether the ideology of the Justices plays a role in securities regulation disputes.

#### Overturning Roe is unique – blocks access to embryonic stem cells crucial to stop disease

Baumann 18 – [Jeannie Baumann – reporter Bloomberg Law, July 6th 2018, “Roe v. Wade Reversal Could Dry Up Access to New Stem Cells”, <https://news.bloomberglaw.com/pharma-and-life-sciences/roe-v-wade-reversal-could-dry-up-access-to-new-stem-cells>, eph]

Could a decision to overturn Roe v. Wade lead to fewer human embryonic stem cell lines for researchers? Perhaps.

President Donald Trump plans to announce July 9 his nominee to replace retiring Supreme Court Justice Anthony Kennedy. With Trump’s promise to appoint justices who oppose abortion, there has been speculation a new conservative tilt to the court could lead to reversal of the landmark 1973 case on abortion.

Sen. Tammy Duckworth (D-Ill.) recently expressed concern such a decision also would prevent in vitro fertilization treatments. If that happens, it could lead to a shortage in new human embryonic stem cells (hESC) that scientists could use for research on diseases ranging from heart disease to cancer to arthritis.

It is illegal under congressional appropriations language known as the Dickey-Wicker amendment to create embryos for research. Scientists have come to rely on discarded embryos created at in vitro fertilization (IVF) clinics, which are the only ones that can be donated for research under National Institutes of Health guidelines. The goal of this nearly decade-old policy was to foster hESC research while addressing ethical concerns because these embryos would never be implanted.

Personhood Argument

The root of Duckworth’s concerns lies in the “personhood” argument, or the push by some abortion opponents to make embryos and fetuses count as people under the Equal Protection Clause of the 14th Amendment. Classifying embryos as people would mean any destruction of those embryos would become murder, a Senate aide told Bloomberg Law.

Duckworth, who in April became the first sitting senator to give birth, said on CNN’s State of the Union, “their abolishment of Roe v. Wade could actually deny those of us who use IVF the ability to seek fertility treatments.”

If the court overturned Roe v. Wade, any impact on IVF and hESC research would depend on how the justices wrote their opinion, but a personhood argument is the most direct threat to IVF and hESC research, R. Alta Charo said. Charo is a law and bioethics professor at the University of Wisconsin at Madison who co-led the National Academies’ Human Embryonic Stem Cell Research Advisory Committee.

Legal, Not Biological Term

“Person is not a biological term in the Constitution. It’s a legal term,” Charo said, noting that at one time the law didn’t consider African slaves and their descendants people until a constitutional amendment fixed that. “The importance of being a person is that you get equal protection, and you’re protected from arbitrary discrimination.”

Justice Harry Andrew Blackmun wrote in his Roe opinion that fetuses don’t have the same degree of protection under the law, which Charo noted the court upheld in the 1992 Planned Parenthood of Southeastern Pennsylvania v. Casey case. “We have precedent now for 45 years that the fetus is not a person for the purpose of the 14th Amendment. If the court were to revisit that, a tremendous number of implications flow.”

IVF causes the loss of many embryos, “despite our best efforts. So you’re embarking on a course that is known to cause embryonic death,” Charo said. IVF clinics also could find they could no longer transfer fertilized eggs until there was a plan for ensuring the remaining embryos would eventually be developed.

“And that would probably make IVF unworkable,” Charo said in a July 3 interview.

Personhood Movement

Daniel Becker, president of the Personhood Alliance, told Bloomberg Law his group doesn’t oppose IVF. “That’s a misnomer and a complete misunderstanding of the position of personhood.”

“We do consider human embryos to enjoy all of the rights of personhood from our earliest biological beginnings,” Becker said in a July 3 interview. “So the area of IVF that is impacted is in the area of the disposition of the embryos themselves.” The alliance opposes freezing embryos and any moves to destroy them.

Becker said the alliance favors only fertilizing embryos that will be transferred into a woman’s uterus based on her age or medical condition and other health factors. “There’s nothing that curtails the IVF treatment itself.”

Making it illegal to discard or freeze embryos that weren’t implanted would make IVF very limited, Alan S. Penzias, chairman of the American Society for Reproductive Medicine’s practice committee and a Harvard Medical School reproductive endocrinologist, told Bloomberg Law. “Ultimately it doesn’t serve the population which needs this service very well to be hemmed in by that kind of judicial oversight.”

IVF has been available in the U.S. since 1981, according to the Centers for Disease Control and Prevention, and in the early days, fertility doctors used to overcome some of the inherent inefficiencies in human reproduction by implanting multiple embryos. “That created a big crisis with triplets and higher order gestation, which can be very dangerous,” Penzias said in a July 3 interview. Now the gold standard is elective single-embryo transfer (eSET), in which one embryo is selected from a larger number of available embryos and placed in the uterus or fallopian tube.

Becker said, “They’re still fertilizing very many more embryos than they need.”

Impact on Research Unclear

With more than 91,000 IVF cycles in 2015 alone, the inability to do IVF treatments in the U.S. could dry up the main source of hESC cells for research. But it’s unclear what impact that would have on whether the science moves forward.

The number of hESC lines available to researchers has grown exponentially since former President Barack Obama signed a 2009 executive order on stem cells. Back then, researchers had access to about 20 lines. As of July 5, the NIH listed 398 available lines in its registry. Scientists also can use induced pluripotent stem (iPS) cells—adult cells that have been reprogrammed to have the qualities of hESCs.

Scientists in a 2010 paper in the journal Biotechnology & Biotechnological Equipment argued researchers constantly need access to new hESC lines because each line comes with particular characteristics that “may restrict their use for some scientific and most of the therapeutic purposes.”

#### New pandemics are coming and cause extinction – preventative measures solve

Diamandis 21 (Eleftherios P. Diamandis, Division Head of Clinical Biochemistry at Mount Sinai Hospital and Biochemist-in-Chief at the University Health Network and is Professor & Head, Clinical Biochemistry, Department of Laboratory Medicine and Pathobiology, University of Toronto, Ontario, Canada, April 14th 2021, “The Mother of All Battles: Viruses vs. Humans. Can Humans Avoid Extinction in 50-100 Years?” modified to fix author typo [“could result n” 🡪 “could result in” <https://www.preprints.org/manuscript/202104.0397/v1>) MULCH

The recent SARS-CoV-2 pandemic, which is causing COVID 19 disease, has taught us unexpected lessons about the dangers of human extinction through highly contagious and lethal diseases. As the COVID 19 pandemic is now being controlled by various isolation measures, therapeutics and vaccines, it became clear that our current lifestyle and societal functions may not be sustainable in the long term. We now have to start thinking and planning on how to face the next dangerous pandemic, not just overcoming the one that is upon us now. Is there any evidence that even worse pandemics could strike us in the near future and threaten the existence of the human race? The answer is unequivocally yes. It is not necessary to get infected by viruses of bats, pangolins and other exotic animals that live in remote forests in order to be in danger. Creditable scientific evidence indicates that the human gut microbiota harbor billions of viruses which are capable of affecting the function of vital human organs such as the immune system, lung, brain, liver, kidney, heart etc. It is possible that the development of pathogenic variants in the gut can lead to contagious viruses which can cause pandemics, leading to destruction of vital organs, causing death or various debilitating diseases such as blindness, respiratory, liver, heart and kidney failures. These diseases could result [in] the complete shutdown of our civilization and probably the extinction of human race. In this essay, I will first provide a few independent pieces of scientific facts and then combine this information to come up with some (but certainly not all) hypothetical scenarios that could cause human race misery, even extinction. I hope that these scary scenarios will trigger preventative measures that could reverse or delay the projected adverse outcomes.

## Adv 1

Plan can’t solve property taxes which is the root cause of public education problems

### Education Adv

#### Public education spending increase

**United States Census Bureau**, **5/18**/20**21** (“Public School Spending Per Pupil Increases by Largest Amount in 11 Years,” <https://www.census.gov/newsroom/press-releases/2021/public-school-spending-per-pupil.html>, Retrieved 10/24/2021)

MAY 18, 2021 — According to new Annual Survey of School System Finances tables, released today by the U.S. Census Bureau, per pupil spending for elementary and secondary public education (pre-K through 12th grade) **for all 50 states and the District of Columbia** increased by 5.0% to $13,187 per pupil during the 2019 fiscal year, compared to $12,559 per pupil in 2018. This is the largest increase in more than a decade. Data for this report covers the fiscal year before the COVID-19 pandemic. The spending increase was due in part to an overall increase in revenue. In 2019, public elementary and secondary schools received $751.7 billion from all revenue sources, up 4.5% from $719.0 billion in 2018. Other highlights include: State governments contributed the greatest share — 46.7% or $350.9 billion — of public school funding in fiscal year 2019. New York ($25,139), the District of Columbia ($22,406), which comprises a single urban district; Connecticut ($21,310), New Jersey ($20,512), and Vermont ($20,315) spent the most per pupil in fiscal year 2019. Of the 100 largest public school systems (based on enrollment), the six that spent the most per pupil in FY 2019 were the New York City School District in New York ($28,004), Boston City Schools in Massachusetts ($25,653), Washington Schools in the District of Columbia ($22,406), San Francisco Unified in California ($17,228), Atlanta School District in Georgia ($17,112), and Seattle Public Schools in Washington ($16,543). Public school systems in Alaska (15.3%), Mississippi (14.0%), South Dakota (13.7%), New Mexico (13.0%) and Arizona (12.9%) received the highest percentage of their revenues from the federal government, while public school systems in New Jersey (4.1%), Connecticut (4.3%), Massachusetts (4.3%), New York (4.8%) and New Hampshire (5.0%) received the lowest. Total public school district debt increased by 3.7% to $495.1 billion in fiscal year 2019 from $477.4 billion in fiscal year 2018. These statistics come from the 2019 Annual Survey of School System Finances. Education finance data include revenues, expenditures, debt and assets (cash and security holdings). Statistics are not adjusted for cost of living differences between geographic areas. A preliminary version of the fiscal year 2020 data will be released in the fall of 2021. No news release associated with this product. Tip sheet only.

Plan doesn’t do anything to stop baseball owners from threatening to leave the state when the state won’t build stadiums for them

Alt cause- baseball owners will still threaten to leave cities if cities won’t build stadiums- plan can’t solve

**Stadium spending doesn’t trade off with education and results in a three to one revenue boost for the state:**

JORDYN **PHELPS,** 6/7/20**15** (staff writer, ABC News, “Scott Walker Defends Tax Dollars, Possible Rate Hike for New Sports Arena,” <https://abcnews.go.com/Politics/scott-walker-defends-tax-dollars-rate-hike-sports/story?id=31595770>, Retrieved 10/24/2021)

— -- Wisconsin's Republican Gov. Scott Walker is defending approval of $250 million in state taxpayer funds to help build a new arena for the Milwaukee Bucks of the NBA. The project is a "good deal" for the state economy, he told ABC News' Jonathan Karl on "This Week," and he insisted that it is "not a new tax." Advertisement "We would lose $419 million over the next 20 years if we did nothing, if we said, go on, move somewhere else, which the NBA said they would do," Walker continued. "In this case, we don't raise any taxes. There are no new taxes, only existing taxes. And we get a **three to one return."** The project will be funded by existing taxes on hotel rooms and rental cars, though the Wisconsin Center Board has the authority to raise the rate, he said. "In this case, we take the tax, the revenues on hotels and rental cars that are currently paid for the convention center and allow those to continue to be paid for a new arena," Walker said. "It's not a new tax." Conservative advocacy groups, including the Koch brothers' Americans for Prosperity, have blasted the proposal as bad for taxpayers, but Walker brushed off the criticism. "All across the nation when they do projects like this," Walker said. "It's a good deal."

How many baseball stadiums are in the country how about football, soccer, hockey, basketball, what about those stadiums- plan can’t solve for other sports

## Adv 2

We are working with other nations now, Biden is restoring our alliances, and all it takes is one populous president to erode everything, there is no spillover, if trump wins in 2024 the baseball ruling won’t matter- plan can’t say spillover to soft power it isn’t just dependent on this baseball ruling

#### Loss of soft power inevitable

**Sherman ‘21**

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With the 2024 election in sight, Republican presidential contenders such as Ron DeSantis, Ted Cruz, and Mike Pompeo have begun racing each other to the bottom to claim the party’s base. That is, unless his MAGA-ness himself gets in the ring.

On the evening of July 19, several dozen Republican donors gathered for dinner in a private room at the St. Regis Aspen to hear Nikki Haley deliver a speech. The former South Carolina governor had been invited by the Republican Governors Association, which was holding its typically drama-free summer meeting at the exclusive Rocky Mountain resort. It would be a prime platform for Haley to court 27 red-state governors as she lays the groundwork for a future presidential run. But when Haley took the stage, attendees noticed that Florida governor Ron DeSantis was conspicuously absent. According to an attendee, DeSantis was holding his own fundraiser 20 miles up the road in Basalt, Colorado. “Ron was pissed he didn’t get asked to speak,” the attendee later recalled

**Welcome to the 2024 Republican presidential primary.**

At this nascent stage, it’s common for prospective candidates to compete fiercely for donor dollars and Fox News airtime. But the 2024 contest is playing out like no other in memory. That’s because the race is either entirely wide open or **over before it begins**. The outcome hinges on the whims, grievances, and obsessions of one Donald J. Trump.

The 45th president retains a **psychic grip** on the **MAGA-fied** **Republican base** more than six months after leaving office **despite two impeachments**, **the horrors of the January 6** Capitol riot, and nearly 350,000 U.S. **COVID-**19 **deaths.** **In July,** Trump dominated the **C**onservative **P**olitical **A**ction **C**ommittee straw poll with 70 percent of the vote. (DeSantis came in a distant second, with 21 percent.) “**It’s a metaphysical impossibility that anybody**, **even a senator named Jesus H. Christ**, could beat Trump in a Republican primary if he runs,” said Michael Caputo, a veteran of Trump’s 2016 campaign who briefly served as spokesman for the Department of Health and Human Services.

**The candidates know this.** Haley, who served as Trump’s U.N. ambassador, told The Associated Press in April that she wouldn’t run if Trump did. Others, such as DeSantis, Texas senator Ted Cruz, and former secretary of state Mike Pompeo, tell reporters they’re merely focused on the midterms. But just because candidates won’t openly challenge Trump doesn’t mean they’re not testing the waters in the event Trump doesn’t jump in. “If Trump doesn’t run, you’re going to have 2016 on steroids. There will be 25 to 30 people running for president,” a prominent Republican said. Could the field include Tucker Carlson? Sean Hannity? Even congresswoman conspiracist Marjorie Taylor Greene? Anything’s possible.

Given Trump’s long history of turning will-he-or-won’t-he speculation into a media spectacle, there’s little chance he’ll declare his 2024 intentions until after the midterms at the earliest. “I think that people will be very happy with my decision,” Trump told me when we spoke in mid-August. He was on the phone from his golf club in Bedminster, New Jersey. Removed from office, his mood was relaxed and upbeat. “I think MAGA is stronger than it’s ever been before,” he said. Trump particularly relished New York governor Andrew Cuomo’s resignation, announced two days before. “I thought he was a tough guy. Maybe he wasn’t,” Trump said.

Mostly, though, Trump seemed to enjoy watching his potential 2024 rivals being forced to anticipate his next move. “Knowing Trump, he’ll dangle it right up to the New Hampshire primary filing deadline,” a Trump confidant told me. Which means candidates are stuck waiting for Trump to get in or get out while they pretend not to be campaigning even as they knife one another behind the scenes. “It’s a holding pattern,” a frustrated Haley adviser said. “It’s unlike any previous race.”

After Mitt Romney lost to Barack Obama in 2012, the Republican National Committee famously commissioned an “autopsy” to diagnose the party’s problems with voters. The internal review produced a 100-page report that advised candidates to broaden the party’s appeal to Hispanics, Blacks, and women. Three years later, that blueprint was blown up when Trump descended his golden escalator and labeled Mexican immigrants “rapists.” “The Republican Party became a cult of personality,” said Sally Bradshaw, a former Jeb Bush adviser who coauthored the 2012 RNC autopsy. (Bradshaw quit the GOP in 2016. She now runs an independent bookstore in Tallahassee, Florida.)

Republicans didn’t even bother with a self-assessment following Trump’s loss to Joe Biden. “The reason there wasn’t an audit this time is the people left in the party **don’t care** about solving problems,” Bradshaw said. If anything, the party’s takeaway from 2020 is that the base wants it to become **more Trumpian**. A Reuters/Ipsos poll in May reported that 61 percent of Republicans agree with Trump’s big lie, that Biden stole the election. A Politico poll in June found that 3 in 10 Republicans subscribed to the conspiracy theory that Trump will be “reinstated” as president.

**Soft power fails -- realism and immeasurability.**

**Yukaruç 17** -- Umut Yukaruç, International Relations PhD from the University of East Anglia. [A Critical Approach to Soft Power, Journal of Bitlis Eren University, 6(2), https://www.researchgate.net/publication/332843308\_A\_Critical\_Approach\_to\_Soft\_Power]

Can it be measured?

One of the problems of soft power is **its inability to measure**. It is not **possible** to prove that one country changes its behaviours because of **other country’s soft power**. When IR theories are examined, it can be seen that Realists, whether classical or structural, focus on power and the international system as the only variables for explaining state behaviour. As Kenneth Waltz (1979: 126) observed “In anarchy, security is the highest end” and “power is a means and not an end”. Power is mostly defined as military and economic capabilities of the states. Neoliberals focus on institutions, practices and interdependency, used a systemic approach as neorealists, and focus mostly on economic capabilities to overcome insecurity created by the anarchical nature of the international system. Then, both theories claim international system and **material capabilities** are the causes of changing behaviours of the states and overlook soft power sources. With these approaches it is **easier** to show a **state behaviour**. For instance, international agreements could be a proof or nuclear capabilities of one country could be a cause of a change in state behaviour.

In Nye’s approach on the other hand, “soft power is fundamentally about improving the USA’s image among populations in other countries. Its premise is that the better America’s image in the world, the more allies it will have, the more support its policies will receive from other states, and the more secure it will be” (Layne, 2010: 53). Yet, it is not **possible** to prove that one country changes its actions according to **other country’s** image. More specifically, it can be better explained with an example. When we look at the relations between Turkey and the Middle Eastern countries we see that Turkish culture such as television series are very popular and President Erdogan is respected and loved in the region. It attracts many people from this region to popular destinations in Turkey therefore we can say Turkey has an influence over the ‘hearts and minds’ of the individuals in the Middle East. Yet, it is not possible to claim that a Middle Eastern country changed its behaviour and support Turkey, in the UN for instance, because of Turkey’s popularity in the region. Layne also states that soft power resource operates is **fuzzy**, whether shared values or multilateralism affect the minds and hearts cannot be **understood**, the outcome might be the consequence of **democracy or institutions** (Layne, 2010: 54).

Here it should also be mentioned that as it is stated in the beginning of this article there are some attempts to measure soft power of countries. One of these attempts, The Global Soft Power Index constructs its research on polling. This index ranks countries in terms of soft power and its research is based on questions asked to people from 25 countries (the sample for Turkey is 500 people). It evaluates the results according to eight factors including favourability towards foreign countries, perceptions of foreign cuisines, desire to visit foreign countries or perceptions of luxury goods. Yet, this research does not solve the problem mentioned above. For instance, it says about Turkey:

“The country’s strengths lie in the Engagement subindex where it performs particularly well in development assistance, its willingness to resettle millions of refugees, and permanent missions to multilateral organisations. Moreover, Turkey commands a critical geopolitical position as the Europe-Asia bridge. It has also made intelligent use of some soft power assets, like the way Turkish Airlines serves as a strong brand ambassador. But Turkey would benefit from working on its international perceptions -- it ranks at the bottom of our polling data this year. Negative perceptions have likely not been helped by the failed military coup; a referendum to secure greater powers for President Erdogan; and country-wide restrictions on media, civil society, and academia” (McClory, 2017: 50).

Although it says many things about Turkey’s soft power assets and what creates positive and negative perceptions about Turkey, we cannot claim that since Turkey has a global brand it has more power among other states or since it has problems in its democracy, it has less power in the region. Thus, this attempt to measure soft power cannot say anything about the **ambiguity of soft power**.

**Too much focus** on agent?

Last criticism of Nye’s concept in this article is that Nye focuses on either agency of actors such as the US or structure which determines what it means to be attractive, he does not conflate agent and structure; because he sought to develop a power concept for the US (Lock, 2010: 36). Since Nye focuses on agents more than structure and it draws our attention from subject to agent soft power turns into almost tangible resource like hard power materials which can be enhanced or produced (Lock, 2010: 36). Bilgin and Elis (2008: 12) also states that this agentfocused approach makes the soft power concept ‘not so soft’ because Nye focuses on the stockpile of soft power of the US and is not worried how US soft power affects the rest of the world. This makes the concept **inconsistent**, because its definition is **changing**, for instance whilst the first definition of soft power was based on **only attraction**, Nye included **economic and military power** when he defined smart power, and he claimed that everything can be soft power nowadays (Layne, 2010: 55). In his article in Foreign Policy, Nye (2006) even asserts that “A well-run military can be a source of admiration”.

Nye focuses on agents more than on subjects of power; he did not consider relational or structural forms of power and those forms of power conflate with each other (Lock, 2010: 34). For instance, on the one hand, Nye stated that the US can use its cultural products such as films and television shows to promote democracy and the rule of law in China. On the other hand, universal values and ideologies such as democracy can be used as attractions when those values and principles are being shared by others (Lock, 2010: 34-35). Lock explains this problem as that while in the former there is a relational form of power in the latter there is a structural form of power and this creates ambiguity in the nature of soft power.

Moreover, In Nye’s concept, the distinction between agencies is **not clear** as well. Which agents, state or society, in terms of wielding soft power is **not clear** (Zahran and Ramos, 2010: 20). Soft power cannot explain the linkage between civil society sources of soft power and different states. According to Nye, states are not the only agents who have soft power; there are other actors such as corporations, popular idols and civil society groups, and states do not have control over them (Zahran and Ramos, 2010: 20). When we think of Turkish television series for instance, they are very popular in many countries and it is believed that they create soft power for Turkey. Yet, they are not controlled by the Turkish state, thus, they should not be accepted as if they are tools of Turkey. This also creates ambiguity when we think about agents that create soft power.

CONCLUSION

This article first explained what soft power is and second brought three criticisms about it. Soft power has a changing definition and its sources expand since it was first used by Nye. Other concepts such as public diplomacy, nation branding and smart power are also articulated with soft power and accepted as its instruments. Soft power concept is widely used by politicians and academics. Although it is tempting for them, it has limitations.

This limitations were investigated under three sections. First, soft power’s originality was examined and other approaches in IR were addressed for this purpose. Intangible sources of soft power can also be found in Classical Realism in IR. Three-dimensional power approach of Lukes is also similar to Nye’s concept and there are common points between Gramscian hegemony concept and soft power. Thus, it can be said that soft power is not so original. Second, **immeasurable nature** of soft power was examined and as a result, it was demonstrated that it could not be possible to prove which **soft power sources** had influence on state behaviours. **Intangibility** of soft power **makes harder** to prove the **influence over hearts and minds**. Third, Nye focused on agent and was not interested in structure and subject. It examined soft power as if something tangible and this made soft power as if it was hard power. Moreover, agents in Nye’s concept were not clear as well and it made soft power **ambiguous**.

### 2NC CP

#### Extend - Counterplan solves case – BUT avoids the plan’s retroactive liability – that bankrupts MLB, turning the entire case

Grow 15 – no response

### 2NC – AT: Perm – Do Counterplan

#### Perm: do counterplan severs – the plan specified the US Supreme Court – the counterplan specified the Congress – severance is a voter because it makes any stable NEG offense impossible

### 2NC – AT: Perm – Do Counterplan

#### Perm: do both still links to the net benefits:

#### 1 – retroactivity is a necessary element of the plan’s ruling – NOT key to solve the case, where advantages are about ongoing practices – BUT independently bankrupts the MLB, which turns all their advantages – that’s Grow

#### 2 – still links to the court politics disad – counterplan avoids affecting Roberts’ need to offset the plan’s perceived liberal activism with an overly conservative ruling

### 2NC – AT: No Legislative Overrides

#### Legislative overrides solve

Brown and Cohen 20 (Marcia Brown, writing fellow at The American Prospect, has written for the New Republic, The Appeal, and The Progressive, former editor-in-chief, Daily Princetonian; and Rachel M. Cohen, contributing writer for The Intercept and award-winning freelance journalist based in Washington, D.C., published in the Washington Post, the Atlantic, and Vice, among other outlets; “COURT ORDER Congress Has the Power to Override Supreme Court Rulings. Here’s How.” The Intercept, 11-24-2020, <https://theintercept.com/2020/11/24/congress-override-supreme-court/>)

\*\*rehighlight to match 1ac

FROM 1979 UNTIL her retirement in 1998, Lilly Ledbetter worked at Goodyear Tire and Rubber’s plant in Gadsden, Alabama. Once she had left the job, she learned a disturbing fact. When Ledbetter had started, her supervisor salary was comparable to men in similar positions. But with each performance review, the men she worked alongside got bigger raises, and she gradually fell further and further behind. By the time she retired, she was earning $3,727 a month: hundreds of dollars less than the lowest-paid man in her position, and significantly below the average man.

Ledbetter took Goodyear to court, alleging a blatant violation of Title VII of the Civil Rights Act, which guarantees equal treatment in the workplace. But in 2007, the Supreme Court held that the statute of limitations on her claims had expired, and she could no longer seek redress. She would have had to file her claim shortly after Goodyear hired her, the court ruled. This was an absurd request — Ledbetter didn’t know how she was being cheated until she neared retirement — and it served to gut the ability of any woman to reasonably enforce the law.

The Supreme Court had issued what’s known as a statutory ruling, which is distinct from a constitutional ruling. In other words, the court had not deemed the law itself to be unconstitutional but merely ruled that the way the statute had been written rendered it unavailable to Ledbetter.

Supreme Court Justice Ruth Bader Ginsburg wrote a dissent that urged Congress to intervene. The court’s interpretation, Ginsburg said, was out of step with modern wage discrimination and the realities of the workplace. She recommended Congress amend the law and fix the court’s “parsimonious reading” so workers like Ledbetter could have a shot at restitution. Ginsburg added: “The ball is in Congress’ court.”

Ledbetter became a proxy for the cause of equal pay for equal work, and Democrats pledged to fight the ruling the first chance they got. And they did, rewriting the statute so that the clock would start ticking on the statute of limitations each time a discriminatory paycheck was issued, not at the time an employee was first hired. The very first piece of legislation President Barack Obama signed in 2009 was the Lilly Ledbetter Fair Pay Act.

What makes Ledbetter so unusual is that Democrats have not similarly fought equally absurd yet consequential rulings from the Supreme Court, instead throwing their hands up in despair at the unfairness of a particular decision and then moving on.

But a joint review of dozens of Supreme Court cases by The Intercept and the American Prospect finds dozens of statutory rulings similar to Ledbetter’s that Congress could overturn simply by tweaking the statute to remove whatever ambiguity the court claimed to find in its text. Even where the court has ruled on constitutional grounds, there is often much room left to legislate the boundaries, just as conservatives have done in relation to Roe v. Wade and abortion restrictions. From salvaging the Voting Rights Act gutted by Shelby County v. Holder in 2013 to protecting workers’ free speech rights on the job or safeguarding reproductive rights, the list of cases awaiting a creative Congress runs long.

Overrides can be passed on an individual basis, as part of larger omnibus bills, or even tacked on to unrelated appropriations or debt ceiling bills. Even the Affordable Care Act, which is currently under judicial review yet again, could be rescued from the court’s clutches with a simple legislative tweak. Most of the legislation necessary to overturn these decisions is short: just a few lines to reinforce congressional intent in a way that the judiciary cannot distort it.

These statutory overrides offer a road map for progressives left paralyzed [frozen] by the court’s new composition, with the installation of Amy Coney Barrett as a sixth conservative justice. Congress can place an important and ever-needed check from a co-equal branch on an increasingly conservative judiciary, which has not shied from defanging legislation, especially regulatory law. Just as the court sets the boundaries of congressional intent, Congress can move those boundaries.

Since the death of Ginsburg in September, the left has debated various options for reforming what many see as an overly partisan judiciary. Some have called for increasing the number of justices to help restore the court’s ideological balance. Others have suggested term limits, or requiring a supermajority for certain decisions. In mid-October, then-presidential candidate Joe Biden said that if elected, he would convene a bipartisan group of scholars to make recommendations on court reform.

While changing the rules and the makeup of the judiciary holds promise, demoralized activists should not lose sight of Congress’s power to temper or reverse existing court decisions. Statutory overrides and chipping away at conservative constitutional decisions should be part of any future progressive agenda, and the set of demands brought to negotiations by the White House and Democrat-controlled House of Representatives.

Overriding judicial decisions, while always an important tool in Congress’s legislative toolbox, has fallen by the wayside over the last two decades. One study, by Yale law professor William Eskridge Jr. and then-federal law clerk Matthew Christiansen, traces the turning point in the nation’s history of judicial overrides to the mid-1970s, when emboldened post-Watergate Democrats passed major omnibus legislation (like the Tax Reform Act of 1976) that updated laws and rejected various Supreme Court decisions at once. It helped that this new wave of overrides overlapped with big increases in congressional staff; House committee staff increased by two-thirds between 1973 and 1975, and the House and Senate judiciary committees grew by even more.

For the next 20 years, up until 1998, Eskridge and Christiansen found that the Democratic-controlled Congress was “energized, aggressive, and highly … interventionist in matters of state policy” and therefore “happy to denounce and reverse anti-regulatory” judicial rulings. Popular policy areas targeted for judicial overrides included civil rights, federal jurisdiction, and tax law, but were not limited to those. Even in the polarized decade of the 1990s, Congress overrode more than 80 rulings, more than any in the preceding four decades. But following Clinton’s impeachment in 1998, judicial overrides slowed to a trickle.

Federal lawmakers currently take something of a piecemeal approach to judicial overrides. Several recent bills that have passed the House override Supreme Court decisions as part of more comprehensive larger legislation, like the Protecting the Right to Organize Act and the For the People Act. But Congress has yet to take up the mantle of congressional overrides as an organized, concerted strategy to take back power.

Some observers, like University of California, Irvine law professor Rick Hasen, predict that judicial overrides would likely require near-unified control of Congress and the presidency, like Democrats had in 2009 when they passed the Lilly Ledbetter Act. In other words, whether Democrats retake the Senate following two Georgia runoffs in January could have a major impact on their ability to get judicial overrides through the legislative grinder, especially as many areas of once bipartisan lawmaking, particularly civil rights, have grown more polarized.

However, despite Congress’s hyperpartisanship, there may be some opportunity for lawmakers to take action on judicial overrides where there’s bipartisan agreement. Moreover, even if Democrats can’t push multiple judicial overrides as standalone legislation, lawmakers could try to tack fixes onto must-pass legislation like the annual National Defense Authorization Act. (These bills — known in congressional jargon as “riders” — are common ways lawmakers leverage the appropriations process to push pet projects through each year.)

Some of this is about finding the right window of opportunity, but a great deal is about refocusing the minds of federal lawmakers, who have for too long accepted the rulings of the Supreme Court as intractable, when they have the power to respond in many cases. “The energy has just not always been there,” said Charlotte Garden, a professor at the Seattle University School of Law who specializes in labor and employment law. Congress should be reinvigorated to use its power, and not simply sit back in resignation.

#### Congress wins – best studies – constitutional overrides are far more likely to win than statutory, even though that seems counter-intuitive

--don’t misinterpret the 29% -- that does NOT mean there’s a 71% risk CP doesn’t solve – it means that Congress chose to actively reverse 1/3 of ALL court strike-downs, including everything they did knowing it would get struck down that was just grandstanding, like RFRA and RLUIPA, and statutory interpretation cases that aren’t relevant to our solvency but skew the percentage down – i.e. when Congress bothers to disagree on Constitutional interpretation, they win, NOT the Court, who only propagates the illusion that they have final say because they strike down often

Emenaker 13 (Ryan Eric Emenaker, College of the Redwoods, “Constitutional Interpretation and Congressional Overrides: Changing Trends in Court-Congress Relations,” paper prepared for the Western Political Science Association Annual Meeting, Hollywood, CA, March 28-30, 2013, https://wpsa.research.pdx.edu/papers/docs/Emenaker-Constitutional%20Interpretation%20and%20Congressional%20Overrides.pdf)

Likewise the Supreme Court’s decision in City of Boerne v. Flores, and the congressional override that followed, exemplify an ongoing struggle to claim superiority in defining the limits of the First Amendment’s free exercise clause. This back and forth between the two branches started with the Supreme Court upholding an action by the state of Oregon government to deny unemployment benefits in Employment Division v. Smith. In Smith the Court stated that a law does not violate the First Amendment’s free exercise clause as long as it is a "neutral law of general applicability” rather than a law specifically intended to target a particular religion.52 In response, Congress passed the Religious Freedom Restoration Act (RFRA) of 1993 which stated that laws of general applicability—federal, state, and local—may substantially burden free exercise of religion only when furthering a compelling governmental interest and constituting the least restrictive means of doing so. The RFRA imposed a substantially higher burden for state legislation; many state laws that would be allowable under the Smith standard would be struck down under Congress’s RFRA standard. But the second round of this dialogue was just the beginning. In Boerne the Court found the overriding statute, the RFRA, to be unconstitutional when applied to state governments. But the story did not end here. In response to the Boerne ruling, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 which significantly modified the impact and reach of the Boerne decision.53 The passage of the RFRA and RLUIPA shows a Congress willing to modify Court decisions even without an invitation. The Metropolitan Washington Airports Act (MWAA) of 1986 is the beginning of another back and forth policy exchange between the Court and Congress without Congress being offered an invitation. The MWAA transferred operating control of two Washington, D.C. area airports from the Federal Government to a regional airports authority. However, that transfer was conditioned on the establishment of a Board of Review, composed of Members of Congress with veto authority over actions of the airports authority’s board of directors. The Court ruled the MWAA unconstitutional because it violated separation of powers principles.54 After the Supreme Court struck down the MWAA, Congress changed it tactics but retained its goal of controlling the operation of the airports. The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 maintained a Board of Review for the airports but conceded members of Congress would no longer be directly on the Board. However, the Board’s members were now to be chosen from lists provided by the Speaker of the House and President pro tempore of the Senate. Most significantly, if the Airport Authority approved an action opposed by the Board of Review, the proposed action could not be implemented until Congress was provided sixty legislative days to pass a joint resolution disapproving.55 Congress members were no longer on the Board, but Congress was able to achieve its goals through other means; the Court nullification of federal law did not substantially affect the ultimate aims of Congress. The cases above show that Congress will pass overriding legislation even when the Court does not offer an invitation. The cases also illustrate that the interaction between the Court and Congress is more complicated than the Court nullifying federal law and Congress contemplating an override—this process can sometimes go multiple rounds. This seems to pose a challenge to the notion that justices always act strategically, or at least always successfully, to avoid overrides. This process shows that judicial finality is a myth, and the process also indicates that increased judicial activity nullifying federal law does not automatically signal judicial supremacy. If Congress is increasing its rate of constitutional-interpretation-overrides in reaction to increased Court activity, this is a sign of Congress shifting its constraints on the Court from before-the-fact appointment controls (as described by Dahl) to after-the-fact overrides of Court decisions. This surely signifies a change in Court-Congress relations, but it does not signal a move towards judicial supremacy. V. Conclusion- This paper identified and examined the forty-one acts of Congress nullified during the Rehnquist Court (see appendix I). These forty-one federal laws represent the greatest number of federal statutes overturned in any nineteen year period in US history and represent the highest rate of judicial activity striking down federal law in US history. Equally noteworthy, the Rehnquist Court saw 29.3 percent of its decisions nullifying federal law overridden by Congress, a rate of successful overrides nearly 50 percent higher than seen in a previous study examining such overrides during 1954-1990 (which includes the first five years of the Rehnquist Court). Thus the Rehnquist Court displays an increase in both judicial review and congressional overrides to constitutional-interpretation-decisions. The high rates of both nullifications and overrides are indicative of a changing relationship between Congress and the Court and have important implications for testing and developing theories of judicial-congressional relations. Three major trends arise from this study: (1) Supreme Court justices are increasingly sitting for longer terms; (2) the Court has been significantly more active in nullifying federal law in the last fifty years, with each of the last three Courts more active than the previous; and (3) Congress regularly overrides Supreme Court decisions that overturn federal law. Each of these trends will be summarized and explored for their significance in understanding modern CourtCongress relations. The first major trend observed in this study is the increasing length of time the Supreme Court justices hold their seats. The average term for a Supreme Court justice from the beginning of the Republic until the late 1950s was 16.6 years. Term lengths have now expanded to 25.17 years. This means that on average, a Supreme Court justice appointed after 1970 serves a 50 percent longer than the than a justice appointed before 1950. As the length of Supreme Court terms increase, Congress and the President have fewer opportunities to shape the Court through the appointment process. In light of this change, theories that primarily rely on the appointment process as a control on the countermajoritarian nature of the Court need to be reexamined. Since Supreme Court justices appointed after 1950 are serving longer terms it may not be surprising that the Warren, Burger, and Rehnquist Courts were more likely, than previous Courts, to strike down acts of Congress. Up until 1950 the Court only invalidated .44 federal laws per year. Under the Rehnquist Court that number has increased more than fivefold to 2.16 per year. The Rehnquist Court expanded a trend that started with the Warren Court. The Warren Court struck down federal statutes at a rate three times that of the Court prior to 1953. This was followed by the Burger Court that nullified federal law at four times the pre-1953 rate. In all, the Rehnquist Court struck down forty-one federal laws, the greatest total of federal statutes overturned in any nineteen-year period. These forty-one statutes represent nearly 25 percent of all act of Congress overturned in US history. During one eight year period the Rehnquist Court was striking down nearly four acts of Congress a year. In 39 percent of cases where the Rehnquist Court struck down a federal law, the law had been adopted within the last five years. The Warren, Burger, and especially the Rehnquist Court show a significant departure from the precedent of the Court rarely overruling Congress. A third trend identified by this paper is the increased number of successful overrides to Court decisions nullifying federal law. In most instances when federal law was nullified, bills were proposed to modify the decision. In 29.3 percent of cases invalidating federal law, during the Rehnquist Court, Congress successfully overrode the Court decision. The rate of overrides found in this study is significantly higher than the rate found in a previous study of constitutional-interpretation-overrides. This rate of overrides is also significantly higher than what has been found in studies focused on statutory overrides. Obviously, the low override rates found in studies focusing on statutory interpretation decisions fail to reflect the commonality of constitutional-interpretation-overrides. This may indicate—despite commonly held beliefs—that it is actually easier for Congress to override a decision based on constitutional interpretation than it is a decisions based on statutory interpretation. This frequency of overrides also directly challenges the belief that the Court has the final word in interpreting the Constitution. Further these results negate the notion that Congress’s only option after the Court nullifies federal law is amending the Constitution, clearly Congress can and does simply pass statues to modify constitution-interpretation-decisions. The above information clearly indicates that interactions between the Court and Congress do not end with judicial review. It also indicates that theories of Court-Congress relations that do not account for constitutional-interpretation-overrides are incomplete. It is important to note that the high rate of nullifications of federal law, and the high rate of congressional overrides, both observed during the Rehnquist Court, do not necessarily reflect hostility between the two branches. In some instances the Court struck down acts of Congress by inviting a congressional override. This clearly supports theories that the justices do not always seek to avoid being overridden. Override invitations suggest it is too simplistic to conclude that Court action nullifying federal law, or congressional attempts to override, automatically indicate strained relations between the branches. At the same time it is also important to note that not all congressional overrides are based on invitations. This means that Supreme Court judges sometimes fail to avoid uninvited overrides. If the justices are acting strategically to avoid overrides, as rational choice scholars suggest, they often miscalculate. The interactions between the Rehnquist Court and Congress also highlighted a process involving multiply rounds of constitutional interpretation. As the process in the Metropolitan Washington Airports Act and Boerne showed, interactions between Congress and the Court continued after the first instance of judicial review. Current rational choice models fail to diagram this level of complexity, oversimplifying the interactions of the two branches. Current chief justice John Roberts is the youngest appointment to the Court in 200 years.56 Assuming President Obama is unable to appoint another justice before the end of his first term it means that the justices on the Court appointed before 2005 would be serving for an average of 25.6 years. The Roberts Court has already stuck down nine acts of Congress in its first six years, an average of 1.5 per year, placing it at nearly twice the rate of the Court’s average for all of its history. Congress for its part nearly passed an override to the Courts decision in Citizens United v. Federal Elections Commission and has entered bills for others. The three trends identified in this study seem likely to continue and should feature prominently in future theories on Court-Congress relations.

#### Courts fail if they try

Sprigman 20 (Christopher Jon Sprigman, professor at New York University School of Law, co-director of NYU’s Engelberg Center on Innovation Law and Policy, “With RBG’s Passing, Start Thinking About How to Rein in the Supreme Court,” Just Security, 9-21-2020, <https://www.justsecurity.org/72512/with-rbgs-passing-start-thinking-about-how-to-rein-in-the-supreme-court/>, JRB)

Finally, judicial resistance to Congress’s exercise of its Article III power is possible, and perhaps even likely, at least initially. What happens if the Supreme Court declares an act of jurisdiction stripping unconstitutional? Everything will depend upon how determined Congress is to have its way. I am reminded of a quip, attributed by Winston Churchill to Josef Stalin. When asked in 1935 by French Foreign Minister Pierre Laval whether Stalin could provide more lenient treatment to Russian Catholics to help convince the Pope to counter the rise of Nazism, Stalin supposedly replied “The Pope! How many divisions has he got?” In a conflict over Congress’s power to limit the courts’ jurisdiction, one might similarly ask how many divisions the courts have. The federal courts are, in fact, utterly dependent on the political branches. The courts are dependent on Congress in the very practical sense that they control neither their own budgets nor even their own facilities. Similarly, the courts are dependent on the executive for execution of their orders. Alexander Hamilton acknowledged the dependence of the courts quite plainly in Federalist 78: The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments. A Congress determined to wield its power to control judicial jurisdiction is well-positioned to beat back any opposition by courts. The real question, then, is not whether courts will accept Congress’s use of its Article III power to change existing constitutional arrangements, but whether voters will. That all depends on how deftly Congress uses the tremendous power that Article III of the Constitution gives it. Congress’s use of the power would make sense only when political support for changing a particular constitutional arrangement is very strong (think: perhaps the overturning of Citizens United v. Federal Election Commission) and likely to be durable. Given how deeply entrenched the institution of judicial review is in our culture, convincing the public that a particular use of the Article III option is both permissible and necessary is going to take a good deal of skill and courage.

### vs. PICs are bad

#### ( ) Prohibit v. Agency Enforcement is the core mechanism question. Proves the Aff objection hampers ground and education. Also proves the CP is atypically predictable – here’s an early section of the winning topic paper:

Topic Paper ‘21

The writing and organization of this topic paper was coordinated by Jeff Buntin, with invaluable contributions made by Nina Fridman, Teja Leburu, Ezra Louvis, Ayush Midha, Bryce Rao, and Tim Wegener. “Antitrust Controversy Area Proposal “ – #E&F - available via NDT-CEDA Forums.

II. Core Controversy

The core controversy for this topic concerns whether the federal government should enforce antitrust laws more stringently, against a wider range of conduct. “Antitrust laws” includes three core statutes: the Sherman Act, the Clayton Act, and the FTC Act. There hasn’t been a significant update to statutory antitrust law in 60 years, and there has been a long-term decline in the vigor with which antitrust actions are pursued by federal regulators and upheld by the courts. Crucially, we suggest that the topic require the affirmative to expand the reach of antitrust law, rather than merely increase enforcement of existing antitrust law. The core controversy for the topic concerns whether firms today – from the “tech giants” of Amazon/Apple/Google/Facebook to energy firms and health care conglomerates – have escaped antitrust scrutiny due to too-narrow interpretations of anticompetitive practices regulated by the above statutes. Expanding the reach of antitrust law – in other words, defining new/additional conduct as anticompetitive and regulating on that basis – would be a large change from the status quo (one that Congress and the Biden administration are almost certainly not going to enact), and it builds in two core negative counterplan approaches: enforce existing law more aggressively, and regulate practices directly through non-antitrust means. The core debates will revolve around whether the harms of current concentration of market power outweigh the downsides of a more activist role for government in regulating the market to ensure competition. This topic will feature debates about the most interesting and controversial sectors in the U.S. economy, from artificial intelligence to news media outlets to renewable energy producers. The way we organize our economy matters for everything, and this topic will allow students to explore broad-ranging implications for the structure of the economy through a mechanism that is constrained enough to produce deep clash – the ideal balance for a season of debates.

#### ( ) That’s not solely defense -

#### Forces Aff to generate a “Prohibit key” warrants – boosting education and research;

#### Also serves as a functional limit on the topic – creating deeper and more educational discussions.

#### ( ) Zero link – we don’t fiat *the Plan*.

#### Our competition threads draw meaningful distinctions - we test the central question posed in the topic – creation of new prohibition vs. agency enforcement of pre-existing ones.

#### ( ) Err Neg

#### This strat isn’t a big ask – Affs just need to defend new laws, instead of interpretation of old ones.

#### To research that, Aff’s have near-infinite prep. They speak first, last, and get to choose the item of discussion.

#### ( ) All Cplans include some mild overlap with the Aff – same government, same time in history, etc. Here, we exclude a centerpiece of the Aff - the “prohibition” and “law”. If that’s illegit, then the Aff radically reduces CP options.

#### Reducing cplans is uniquely bad on this topic – which is otherwise huge.

#### Also turns education – Neg’s are left BOTH underprepared AND needing to defend the squo – defaulting to bad terminal impact turns or hyper-generic K’s.

#### ( ) reject theory, not team.

#### Not a logical reason to vote Aff – default to judge kick.

#### ( ) And, Real World Education:

#### We live in an era where Agency schemes are actually the Alt to new statutes. That’s key to learn about antitrust – but also DACA, the green agenda and every other issue-of-the day. Our internal link into education is bigger:

Metzger ‘15

Gillian E. Metzger is a Constitutional Law Scholar and a Professor of Law at Columbia Law School – “AGENCIES, POLARIZATION, AND THE STATES” – Columbia Law Review - VOL. 115 - #7 - #E&F – modified for language that may offend - https://columbialawreview.org/content/agencies-polarization-and-the-states/

Political polarization is all the rage. Both popular and scholarly ~~voices~~ (perspectives) regularly bemoan the depths of partisanship and division to which our national politics have sunk. Assessments of causes and possible cures abound. In Terminal Congressional Dysfunction?, Cynthia Farina offers a comprehensive and insightful analysis of this burgeoning field. 7 Yet as Professor Farina notes, for all the ink increasingly spilled, key aspects of polarization's dynamics remain unclear. 2 A particularly big hole concerns the relationship between polarization and administrative agencies.

Administrative agencies are strikingly absent from leading accounts of contemporary polarization. 3 The focus instead is on Congress, the President, and voters. 4 To the extent agencies appear, they surface largely as acted-upon entities who bear the fallout from the congressional-presidential confrontations that polarization fuels. Scholars emphasize how congressional polarization has held up appointments of top agency officials, 5 created budget uncertainty for agencies, 6 and subjected them to increased investigations. 7 Agencies play a somewhat more active role in accounts of presidential unilateralism, but here, too, they feature primarily as tools of the President rather than as policy initiators in their own right. Hence, the ongoing rulemaking by the Environmental Protection Agency (EPA) on power plant emissions is portrayed and attacked as President Barack Obama's climate change plan, 9 while the recent immigration enforcement initiatives promulgated by the Department of Homeland Security (DHS) are commonly referred to as President Obama's immigration executive actions—including by the White House—despite being embodied in memoranda issued by the Secretary of Homeland Security, Jeh Johnson. 10

The failure to incorporate administrative agencies into polarization accounts is a major omission. Administrative government, and particularly regulatory government, fundamentally transforms the polarization equation. Indeed, the presence of an extensive national administrative state marks a signal difference between the nation's current situation and prior instances of high polarization, such as in the period from 1890 to 1910, when modern administrative agencies were nascent. 77 Although agencies are clearly affected by the hyperpartisanship that dominates the political branches, they are still able to act. Agencies possess broad grants of preexisting authority that they can use to reshape governing policy and law, often at presidential instigation, thereby putting pressure on Congress to respond. In the process, they can construct new alliances and arrangements that have the potential to break through partisan divides and alter the political landscape. If nothing else, agencies' preexisting powers mean that the policy gridlock produced by polarization at the political level does not forestall policy development altogether.

Importantly, agencies are not simply pawns in a battle between the two parties or institutional struggle among the political branches of national government. To be sure, polarization has reinforced the already strong trend toward presidential administration, as Presidents seek to use agencies to advance partisan policy agendas stymied by congressional stalemate. 72 In turn, Congress increasingly treats executive agencies as presidential surrogates and fair partisan game. 13 Thus, the increased focus on specifically presidential unilateralism in polarization contexts reflects real-life dynamics. But as Peter Strauss has emphasized repeatedly and powerfully, most recently in Overseer, or "The Decider"? The President in Administrative Law, 74 agencies cannot simply be equated with the President. 75 Agencies have independent stature, responsibilities, and allegiances, and they also have their own policy agendas that they seek to advance on the political branches. 76

#### ( ) We don’t create a slippery slope to the worst CPs

#### Their extreme examples are far from topic-specific and core ground.

#### ( ) Disad alone wouldn’t check.

#### That’s a normatively worse standard – all our ev establishes the value of CP – not just the corresponding net benefits. Here we have a meaningful internal net benefit that would lost in the shuffle if were part of defending an unjust status quo. Their standard lowers the threshold for non-objectionable 1AC choices –which is bad.

## aT Condo bad

for the condo: as the aff, you are granted the ground, we as the neg have to be able to respond to your arguments... which includes being able to kick out of CPS.. it's a question for fairness for the neg.. and saying condo hurts the neg, because we can't go against the affs plan

this addresses all parts of their condo bad arg ... it's about fairness for the neg and condo good is fairness for the neg, the aff already has grounds

### Case

### Legitimacy Adv

We are working with other nations now, Biden is restoring our alliances, and all it takes is one populous president to erode everything, there is no spillover, if trump wins in 2024 the baseball ruling won’t matter- plan can’t say spillover to soft power it isn’t just dependent on this baseball ruling

Kim evidence doesn’t prove stadiums cause low approval rates, reflection of national status

The rest of their cards “proving” the escalation ladder” don’t mean anything because the escalation ladder does not work, and in cross ex,, they fproved they didn’t have concrete evidence about the impact stadiums have on local communities – no stats (no perents) also they have no specific on what parts of edu r impacted (test scores, grad rates) their evidence is too broad to prove the negative impacts of stadiums

#### Loss of soft power inevitable – their ham evidence if from 2014… doesn’t take into account current dynamics

**Sherman ‘21**

**Soft power fails -- realism and immeasurability.**

**Yukaruç 17** --

#### Loss of soft power inevitable

**Sherman ‘21**

Gabriel Sherman is a special correspondent for Vanity Fair. Most recently, Sherman served as national-affairs editor at New York magazine, and he is a regular contributor to NBC News and MSNBC. “2016 ON STEROIDS”: THE RACE TO INHERIT TRUMP’S MAGA BASE IS ALREADY ON—AND THE KNIVES ARE OUT” – Vanity Fair: Hive – October, 2021 - #E&F - https://www.vanityfair.com/news/2021/09/the-race-to-inherit-trumps-maga-base-is-already-on

With the 2024 election in sight, Republican presidential contenders such as Ron DeSantis, Ted Cruz, and Mike Pompeo have begun racing each other to the bottom to claim the party’s base. That is, unless his MAGA-ness himself gets in the ring.

On the evening of July 19, several dozen Republican donors gathered for dinner in a private room at the St. Regis Aspen to hear Nikki Haley deliver a speech. The former South Carolina governor had been invited by the Republican Governors Association, which was holding its typically drama-free summer meeting at the exclusive Rocky Mountain resort. It would be a prime platform for Haley to court 27 red-state governors as she lays the groundwork for a future presidential run. But when Haley took the stage, attendees noticed that Florida governor Ron DeSantis was conspicuously absent. According to an attendee, DeSantis was holding his own fundraiser 20 miles up the road in Basalt, Colorado. “Ron was pissed he didn’t get asked to speak,” the attendee later recalled

**Welcome to the 2024 Republican presidential primary.**

At this nascent stage, it’s common for prospective candidates to compete fiercely for donor dollars and Fox News airtime. But the 2024 contest is playing out like no other in memory. That’s because the race is either entirely wide open or **over before it begins**. The outcome hinges on the whims, grievances, and obsessions of one Donald J. Trump.

The 45th president retains a **psychic grip** on the **MAGA-fied** **Republican base** more than six months after leaving office **despite two impeachments**, **the horrors of the January 6** Capitol riot, and nearly 350,000 U.S. **COVID-**19 **deaths.** **In July,** Trump dominated the **C**onservative **P**olitical **A**ction **C**ommittee straw poll with 70 percent of the vote. (DeSantis came in a distant second, with 21 percent.) “**It’s a metaphysical impossibility that anybody**, **even a senator named Jesus H. Christ**, could beat Trump in a Republican primary if he runs,” said Michael Caputo, a veteran of Trump’s 2016 campaign who briefly served as spokesman for the Department of Health and Human Services.

**The candidates know this.** Haley, who served as Trump’s U.N. ambassador, told The Associated Press in April that she wouldn’t run if Trump did. Others, such as DeSantis, Texas senator Ted Cruz, and former secretary of state Mike Pompeo, tell reporters they’re merely focused on the midterms. But just because candidates won’t openly challenge Trump doesn’t mean they’re not testing the waters in the event Trump doesn’t jump in. “If Trump doesn’t run, you’re going to have 2016 on steroids. There will be 25 to 30 people running for president,” a prominent Republican said. Could the field include Tucker Carlson? Sean Hannity? Even congresswoman conspiracist Marjorie Taylor Greene? Anything’s possible.

Given Trump’s long history of turning will-he-or-won’t-he speculation into a media spectacle, there’s little chance he’ll declare his 2024 intentions until after the midterms at the earliest. “I think that people will be very happy with my decision,” Trump told me when we spoke in mid-August. He was on the phone from his golf club in Bedminster, New Jersey. Removed from office, his mood was relaxed and upbeat. “I think MAGA is stronger than it’s ever been before,” he said. Trump particularly relished New York governor Andrew Cuomo’s resignation, announced two days before. “I thought he was a tough guy. Maybe he wasn’t,” Trump said.

Mostly, though, Trump seemed to enjoy watching his potential 2024 rivals being forced to anticipate his next move. “Knowing Trump, he’ll dangle it right up to the New Hampshire primary filing deadline,” a Trump confidant told me. Which means candidates are stuck waiting for Trump to get in or get out while they pretend not to be campaigning even as they knife one another behind the scenes. “It’s a holding pattern,” a frustrated Haley adviser said. “It’s unlike any previous race.”

After Mitt Romney lost to Barack Obama in 2012, the Republican National Committee famously commissioned an “autopsy” to diagnose the party’s problems with voters. The internal review produced a 100-page report that advised candidates to broaden the party’s appeal to Hispanics, Blacks, and women. Three years later, that blueprint was blown up when Trump descended his golden escalator and labeled Mexican immigrants “rapists.” “The Republican Party became a cult of personality,” said Sally Bradshaw, a former Jeb Bush adviser who coauthored the 2012 RNC autopsy. (Bradshaw quit the GOP in 2016. She now runs an independent bookstore in Tallahassee, Florida.)

Republicans didn’t even bother with a self-assessment following Trump’s loss to Joe Biden. “The reason there wasn’t an audit this time is the people left in the party **don’t care** about solving problems,” Bradshaw said. If anything, the party’s takeaway from 2020 is that the base wants it to become **more Trumpian**. A Reuters/Ipsos poll in May reported that 61 percent of Republicans agree with Trump’s big lie, that Biden stole the election. A Politico poll in June found that 3 in 10 Republicans subscribed to the conspiracy theory that Trump will be “reinstated” as president.

**Soft power fails -- realism and immeasurability.**

**Yukaruç 17** -- Umut Yukaruç, International Relations PhD from the University of East Anglia. [A Critical Approach to Soft Power, Journal of Bitlis Eren University, 6(2), https://www.researchgate.net/publication/332843308\_A\_Critical\_Approach\_to\_Soft\_Power]

Can it be measured?

One of the problems of soft power is **its inability to measure**. It is not **possible** to prove that one country changes its behaviours because of **other country’s soft power**. When IR theories are examined, it can be seen that Realists, whether classical or structural, focus on power and the international system as the only variables for explaining state behaviour. As Kenneth Waltz (1979: 126) observed “In anarchy, security is the highest end” and “power is a means and not an end”. Power is mostly defined as military and economic capabilities of the states. Neoliberals focus on institutions, practices and interdependency, used a systemic approach as neorealists, and focus mostly on economic capabilities to overcome insecurity created by the anarchical nature of the international system. Then, both theories claim international system and **material capabilities** are the causes of changing behaviours of the states and overlook soft power sources. With these approaches it is **easier** to show a **state behaviour**. For instance, international agreements could be a proof or nuclear capabilities of one country could be a cause of a change in state behaviour.

In Nye’s approach on the other hand, “soft power is fundamentally about improving the USA’s image among populations in other countries. Its premise is that the better America’s image in the world, the more allies it will have, the more support its policies will receive from other states, and the more secure it will be” (Layne, 2010: 53). Yet, it is not **possible** to prove that one country changes its actions according to **other country’s** image. More specifically, it can be better explained with an example. When we look at the relations between Turkey and the Middle Eastern countries we see that Turkish culture such as television series are very popular and President Erdogan is respected and loved in the region. It attracts many people from this region to popular destinations in Turkey therefore we can say Turkey has an influence over the ‘hearts and minds’ of the individuals in the Middle East. Yet, it is not possible to claim that a Middle Eastern country changed its behaviour and support Turkey, in the UN for instance, because of Turkey’s popularity in the region. Layne also states that soft power resource operates is **fuzzy**, whether shared values or multilateralism affect the minds and hearts cannot be **understood**, the outcome might be the consequence of **democracy or institutions** (Layne, 2010: 54).

Here it should also be mentioned that as it is stated in the beginning of this article there are some attempts to measure soft power of countries. One of these attempts, The Global Soft Power Index constructs its research on polling. This index ranks countries in terms of soft power and its research is based on questions asked to people from 25 countries (the sample for Turkey is 500 people). It evaluates the results according to eight factors including favourability towards foreign countries, perceptions of foreign cuisines, desire to visit foreign countries or perceptions of luxury goods. Yet, this research does not solve the problem mentioned above. For instance, it says about Turkey:

“The country’s strengths lie in the Engagement subindex where it performs particularly well in development assistance, its willingness to resettle millions of refugees, and permanent missions to multilateral organisations. Moreover, Turkey commands a critical geopolitical position as the Europe-Asia bridge. It has also made intelligent use of some soft power assets, like the way Turkish Airlines serves as a strong brand ambassador. But Turkey would benefit from working on its international perceptions -- it ranks at the bottom of our polling data this year. Negative perceptions have likely not been helped by the failed military coup; a referendum to secure greater powers for President Erdogan; and country-wide restrictions on media, civil society, and academia” (McClory, 2017: 50).

Although it says many things about Turkey’s soft power assets and what creates positive and negative perceptions about Turkey, we cannot claim that since Turkey has a global brand it has more power among other states or since it has problems in its democracy, it has less power in the region. Thus, this attempt to measure soft power cannot say anything about the **ambiguity of soft power**.

**Too much focus** on agent?

Last criticism of Nye’s concept in this article is that Nye focuses on either agency of actors such as the US or structure which determines what it means to be attractive, he does not conflate agent and structure; because he sought to develop a power concept for the US (Lock, 2010: 36). Since Nye focuses on agents more than structure and it draws our attention from subject to agent soft power turns into almost tangible resource like hard power materials which can be enhanced or produced (Lock, 2010: 36). Bilgin and Elis (2008: 12) also states that this agentfocused approach makes the soft power concept ‘not so soft’ because Nye focuses on the stockpile of soft power of the US and is not worried how US soft power affects the rest of the world. This makes the concept **inconsistent**, because its definition is **changing**, for instance whilst the first definition of soft power was based on **only attraction**, Nye included **economic and military power** when he defined smart power, and he claimed that everything can be soft power nowadays (Layne, 2010: 55). In his article in Foreign Policy, Nye (2006) even asserts that “A well-run military can be a source of admiration”.

Nye focuses on agents more than on subjects of power; he did not consider relational or structural forms of power and those forms of power conflate with each other (Lock, 2010: 34). For instance, on the one hand, Nye stated that the US can use its cultural products such as films and television shows to promote democracy and the rule of law in China. On the other hand, universal values and ideologies such as democracy can be used as attractions when those values and principles are being shared by others (Lock, 2010: 34-35). Lock explains this problem as that while in the former there is a relational form of power in the latter there is a structural form of power and this creates ambiguity in the nature of soft power.

Moreover, In Nye’s concept, the distinction between agencies is **not clear** as well. Which agents, state or society, in terms of wielding soft power is **not clear** (Zahran and Ramos, 2010: 20). Soft power cannot explain the linkage between civil society sources of soft power and different states. According to Nye, states are not the only agents who have soft power; there are other actors such as corporations, popular idols and civil society groups, and states do not have control over them (Zahran and Ramos, 2010: 20). When we think of Turkish television series for instance, they are very popular in many countries and it is believed that they create soft power for Turkey. Yet, they are not controlled by the Turkish state, thus, they should not be accepted as if they are tools of Turkey. This also creates ambiguity when we think about agents that create soft power.

CONCLUSION

This article first explained what soft power is and second brought three criticisms about it. Soft power has a changing definition and its sources expand since it was first used by Nye. Other concepts such as public diplomacy, nation branding and smart power are also articulated with soft power and accepted as its instruments. Soft power concept is widely used by politicians and academics. Although it is tempting for them, it has limitations.

This limitations were investigated under three sections. First, soft power’s originality was examined and other approaches in IR were addressed for this purpose. Intangible sources of soft power can also be found in Classical Realism in IR. Three-dimensional power approach of Lukes is also similar to Nye’s concept and there are common points between Gramscian hegemony concept and soft power. Thus, it can be said that soft power is not so original. Second, **immeasurable nature** of soft power was examined and as a result, it was demonstrated that it could not be possible to prove which **soft power sources** had influence on state behaviours. **Intangibility** of soft power **makes harder** to prove the **influence over hearts and minds**. Third, Nye focused on agent and was not interested in structure and subject. It examined soft power as if something tangible and this made soft power as if it was hard power. Moreover, agents in Nye’s concept were not clear as well and it made soft power **ambiguous**.

### Education Adv

Their Schein’17 Gomer & Hille, 2017, evidence is from 2017, and it takes into account Trump getting into office – it’s alarmist and things are already in the process of changing… in addition it’s been 4 years since this card.. and cities have not underwent any major reduction of public subsidies **directly** because of the mlb…rather sstructural issues impacting BIPOC have more of an impact… so the aff doesn’t have solvency or magnititude

During cross ex.. they said stadiums fund 30% of the local economy… none of their cards say this or talk about stats

Plan doesn’t do anything to stop baseball owners from threatening to leave the state when the state won’t build stadiums for them

Alt cause- baseball owners will still threaten to leave cities if cities won’t build stadiums- plan can’t solve

I’m gonna read you this tag –

#### Reducing education spending to fund stadiums for billionaires jeopardizes the economic livelihoods of low income and communities of color.

Belfeld, 2021,

If you read this card, there is nowhere where there is a discussion of **stadiums** jeapordizing marginalizing community, this is a misrepresentation of the card to fit a nonexisting escalation ladder

#### Decreasing education and economic opportunities will result in higher levels of mortality.

Venkataramani, et al., 2020, - doesn’t relate to the stdiums – this escalation ladder isn’t proven

Extend -

#### Public education spending increase

**United States Census Bureau**, **5/18**/20**21**

**+**

**Stadium spending doesn’t trade off with education and results in a three to one revenue boost for the state:**

JORDYN **PHELPS,** 6/7/20**15**

Makes clear that their escalation ladder is ridiculus… stadiums do not save democracy… as they r trying to say… it’s just inaccurate, also public funding increase means the stadiums do not have much of an impact, this is 2021, their “empirical evidence” can’ counter

#### Public education spending increase

**United States Census Bureau**, **5/18**/20**21** (“Public School Spending Per Pupil Increases by Largest Amount in 11 Years,” <https://www.census.gov/newsroom/press-releases/2021/public-school-spending-per-pupil.html>, Retrieved 10/24/2021)

MAY 18, 2021 — According to new Annual Survey of School System Finances tables, released today by the U.S. Census Bureau, per pupil spending for elementary and secondary public education (pre-K through 12th grade) **for all 50 states and the District of Columbia** increased by 5.0% to $13,187 per pupil during the 2019 fiscal year, compared to $12,559 per pupil in 2018. This is the largest increase in more than a decade. Data for this report covers the fiscal year before the COVID-19 pandemic. The spending increase was due in part to an overall increase in revenue. In 2019, public elementary and secondary schools received $751.7 billion from all revenue sources, up 4.5% from $719.0 billion in 2018. Other highlights include: State governments contributed the greatest share — 46.7% or $350.9 billion — of public school funding in fiscal year 2019. New York ($25,139), the District of Columbia ($22,406), which comprises a single urban district; Connecticut ($21,310), New Jersey ($20,512), and Vermont ($20,315) spent the most per pupil in fiscal year 2019. Of the 100 largest public school systems (based on enrollment), the six that spent the most per pupil in FY 2019 were the New York City School District in New York ($28,004), Boston City Schools in Massachusetts ($25,653), Washington Schools in the District of Columbia ($22,406), San Francisco Unified in California ($17,228), Atlanta School District in Georgia ($17,112), and Seattle Public Schools in Washington ($16,543). Public school systems in Alaska (15.3%), Mississippi (14.0%), South Dakota (13.7%), New Mexico (13.0%) and Arizona (12.9%) received the highest percentage of their revenues from the federal government, while public school systems in New Jersey (4.1%), Connecticut (4.3%), Massachusetts (4.3%), New York (4.8%) and New Hampshire (5.0%) received the lowest. Total public school district debt increased by 3.7% to $495.1 billion in fiscal year 2019 from $477.4 billion in fiscal year 2018. These statistics come from the 2019 Annual Survey of School System Finances. Education finance data include revenues, expenditures, debt and assets (cash and security holdings). Statistics are not adjusted for cost of living differences between geographic areas. A preliminary version of the fiscal year 2020 data will be released in the fall of 2021. No news release associated with this product. Tip sheet only.

**Stadium spending doesn’t trade off with education and results in a three to one revenue boost for the state:**

JORDYN **PHELPS,** 6/7/20**15** (staff writer, ABC News, “Scott Walker Defends Tax Dollars, Possible Rate Hike for New Sports Arena,” <https://abcnews.go.com/Politics/scott-walker-defends-tax-dollars-rate-hike-sports/story?id=31595770>, Retrieved 10/24/2021)

— -- Wisconsin's Republican Gov. Scott Walker is defending approval of $250 million in state taxpayer funds to help build a new arena for the Milwaukee Bucks of the NBA. The project is a "good deal" for the state economy, he told ABC News' Jonathan Karl on "This Week," and he insisted that it is "not a new tax." Advertisement "We would lose $419 million over the next 20 years if we did nothing, if we said, go on, move somewhere else, which the NBA said they would do," Walker continued. "In this case, we don't raise any taxes. There are no new taxes, only existing taxes. And we get a **three to one return."** The project will be funded by existing taxes on hotel rooms and rental cars, though the Wisconsin Center Board has the authority to raise the rate, he said. "In this case, we take the tax, the revenues on hotels and rental cars that are currently paid for the convention center and allow those to continue to be paid for a new arena," Walker said. "It's not a new tax." Conservative advocacy groups, including the Koch brothers' Americans for Prosperity, have blasted the proposal as bad for taxpayers, but Walker brushed off the criticism. "All across the nation when they do projects like this," Walker said. "It's a good deal."

### Ext --- Soft Power Doesn’t Solve

#### Soft power doesn’t solve

**Doctorow ’13** (Gilbert Doctorow, Research Fellow of the American University in Moscow, “Soft power is largely an American PR gimmick”, May 20, 2013)

The recent nose-thumbing at Russia and China by Professor Joseph Nye in Foreign Policy magazine over the inability of those countries to marshal soft power is flawed in a number of ways that go beyond the methodological weaknesses of his scholarly writings that I have described at length elsewhere.¹ This article is part of Voice of Russia Experts’ Panel Discussion It is curious that Nye insists soft power is purely the work of a free society and cannot be formed or directed by governments like the Chinese or the Russians, when in his own 2004 master work on the concept he bemoaned the cutbacks in US government-financed image projection by the USIA going back to the end of the Cold War. And in the same work he listed steps that Washington should do to promote soft power, including educational and military exchanges, liberalization of visas and the like. I have long agreed with Nye that the Kremlin’s efforts at exercising soft power have often been inept. For example, the Valdai Discussion Club meetings have only flattered fat-cat American academics who, after their photo opportunity with Vladimir Putin, returned home and laid into Russia with even greater vigor from their university and think-tank perches. At the same time, Russia’s cultural icons are genuinely very popular abroad. The Hermitage Amsterdam is a world-class calling card that carries weight greater than the humbler British Council or Alliance Française installations. The Mariinsky Theater, newly launched into a Lincoln Center type complex with the opening of its second stage, enjoys worldwide respect both on tour and at home during the White Nights Festival. Friends in the travel industry assure me that the coming summer season bookings of upper middle-class American tourists to Moscow, St Petersburg and the Golden Triangle are at a multi-year high. There is not much in all of this for the Kremlin to use in furtherance of its foreign policy objectives. But then the fact that Hilary Clinton chose Nye as the State Department’s house philosopher during her tenure did not change the substance of Obama’s foreign policy even if it may have influenced the sound bites. And it could not be otherwise, because **soft power is largely a public relations gimmick.** Since Nye is an idealist rather than a realist, **he systematically fails to understand that soft power is above all a by-product of wealth and success.** America’s undisputed power of attraction to peoples around the world (when it is not invading hapless countries) **has more to do with its per capita GDP than with any other factor**. This explains the passion of ambitious people everywhere to send their children to American colleges, whatever their ratings. It explains the popularity of Hollywood and pop culture and much more. There is nothing wrong with this; it is all understandable in human terms. But **it has relatively little to do with** vibrant civil society or any beacon of **human rights** radiating from Washington, D.C. In this respect, the best thing that Russia or China can do to further their soft power **is to get richer quick**. In the meantime, Beijing and Moscow would be wise to keep their eyes on the ball, that is on their hard power. If you can’t be loved, it is quite sufficient to be respected. 1. The underlying notion of soft power can be sufficiently explained in a sentence or two. Nye has written volumes. However, his “research” is utterly indiscriminating and he is enthralled by new media. See my critique in Great Post-Cold War American Thinkers on International Relations (2010)

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## Court Politics DA

### Yes UQ – No Overrule – 2NC

#### SCOTUS will avoid fully overruling Roe in Dobbs – they’ll attempt to preserve the appearance of moderation – Cohen

#### They’re hesitant to overturn---justices care about institutional reputation.

Quinn 9-30 (Melissa Quinn, Reporter for CBS News; Citing Roman Martinez, a partner at Latham & Watkins; and Allison Orr Larsen, a professor at William & Mary Law School; “Supreme Court gears up for new term filled with contentious disputes;” 09-30-21, CBS News, <https://www.msn.com/en-us/news/us/supreme-court-gears-up-for-new-term-filled-with-contentious-disputes/ar-AAOZAQc?ocid=BingNewsSearch>, TM)

The most-watched case on the Supreme Court's merits docket this term is a bid by Mississippi to enforce a law banning abortions after 15 weeks, in which the justices will hear arguments December 1.

The abortion dispute is the most significant to come before the justices since the 1992 decision in Planned Parenthood v. Casey, which reaffirmed the central holding in Roe v. Wade and said state regulations cannot impose an "undue burden" on a woman seeking an abortion before viability, generally considered to be 22 to 24 weeks into pregnancy.

In their petition with the Supreme Court filed last summer, Mississippi officials said the questions presented by their case "do not require the court to overturn Roe or Casey," but rather ask the court to "reconcile a conflict in its own precedents."

But after the Supreme Court agreed in May to hear the case, Mississippi officials asked the court to overrule Roe and Casey outright, arguing they are "egregiously wrong" and have "proven hopelessly unworkable."

"Overturning precedent is always a major deal," Martinez said, "and I think all nine justices think very carefully and seriously before overturning precedent. They approach it in slightly different ways, but all recognize it's a big deal. There's always going to be a powerful gravitational pull in favor of deciding something more narrowly."

Abortion rights advocates worry a decision in favor of Mississippi could pave the way for more Republican-led states to pass laws limiting abortion access and argued in a filing with the court that the state is requesting it "scuttle a half-century of precedent and invite states to ban abortion entirely."

Larsen, meanwhile, predicted even the court's conservative justices who oppose Roe could still be looking for an off-ramp in the case, or incremental ways to narrow the holding of Roe and Casey rather than overturning them altogether.

To accomplish that, she said the court can either narrow or eliminate the viability line, or give states more leeway to legislate in areas of "medical uncertainty," which would allow for more restrictions on the procedure.

Larsen also said the change in position by Mississippi officials in their filings — to now asking for Roe to be overturned — warrants dismissal of the case.

"The decision to reconsider precedent is a significant one. It can have substantial consequences for both the country and the court as an institution, so this court has never undertaken the task lightly," Larsen and a group of law professors argued in a filing with the high court. "Given these stakes, the court should not consider overturning nearly half a century of precedent when that issue was not properly raised in the petition for certiorari."

Also pending before the court are requests for the justices to hear cases involving laws from Arkansas and Missouri that prohibit abortions performed because the fetus may have Down syndrome, as well as a New York regulation requiring employer health insurance plans to cover abortions.

#### Roe V Wade is unlikely to get struck down, but if backlash can be managed Roberts & moderates will flip

Finucane 9/2 – [Martin Finucane - Assistant metro editor at Boston Globe, September 2nd 2021, “Is the Supreme Court going to overturn Roe v. Wade? Legal experts are divided”, <https://www.bostonglobe.com/2021/09/02/nation/is-supreme-court-going-overturn-roe-v-wade-legal-experts-are-divided/>, eph]

Legal experts offered a variety of predictions Thursday on whether the US Supreme Court is poised to overturn Roe v. Wade, the landmark 1973 decision establishing a woman’s constitutional right to get an abortion.

At least five and maybe six of the justices on the nine-member court are “ready to overturn Roe and its legacy,” said Mark Tushnet, an emeritus Harvard Law School professor. “I think it was clear with the appointment of Justice [Amy Coney] Barrett that there was a firm majority to repudiate the court’s abortion-related jurisprudence.”

But other experts were less sure of how the high court will rule or suggested it would move incrementally, rather than make a sweeping move.

The Supreme Court generated headlines when, in a provisional ruling late Wednesday, it refused to block a Texas law barring most abortions. The case continues in the lower federal courts.

But the ruling set the stage for a showdown in the court’s next term, which starts next month, when the court will decide whether Roe v. Wade should be overruled in a case from Mississippi concerning a state law banning most abortions after 15 weeks that has been blocked by lower courts.

Tushnet said the 5-4 Texas decision increases the probability that in the Mississippi case, five of the justices “will be willing to say, ‘Let’s just overrule Roe v. Wade.’ ”

“If they go down that path, which I think is likely, they will expressly overturn the whole thing,” he said.

Harvard Law Professor Michael Klarman said, “I don’t know the answer and nobody can be super-confident. My best guess is there are not five votes to flat-out overturn Roe v. Wade.”

At the same time, he said, “That doesn’t mean they’re not prepared to gut it” or “drain it of most of its meaning.”

One way, he said, would be if the court shortened the time period women have a right to get an abortion.

“The main point from their perspective is to avoid a headline saying ‘Supreme Court repudiates 50-year-old precedent,’ ” he said.

If Roe v. Wade were to be overturned, it would create intense controversy, he noted.

“If they ever do say that, there’s just going to be an explosion in the country,” he said. “There’s no reason to think the country is going to tolerate it.”

Mary Ziegler, a Florida State University law professor who is the author of “Abortion and the Law in America,” also thought the court wasn’t likely to simply toss out Roe v. Wade.

“We may be talking a series of decisions, rather than just one,” said Ziegler, who will be a visiting professor at Harvard Law in the spring.

She said the court, “even in the order from Texas yesterday seemed concerned about a possible political backlash.”

“Proceeding more gradually and making the case to the public might make more sense than doing things in one fell swoop,” she said. “The court knows the public is watching.”

The court has shifted to the right in recent years, with three members appointed by Republican Donald Trump, who had vowed to name justices prepared to overrule Roe v. Wade. One of the justices, Barrett, replaced Ruth Bader Ginsburg, who viewed access to abortion as essential to women’s autonomy and equality. Another justice, Brett M. Kavanaugh, replaced Anthony M. Kennedy, a cautious supporter of abortion rights. (The third justice, Neil Gorsuch, replaced the conservative Antonin Scalia.)

Ziegler said Barrett and Kavanaugh know that they were “selected in part because they were expected to rule a certain way on abortion,” but at the same time they also “must know how they handle these cases will define their legacy as jurists.”

Suffolk University Law School Professor Renée Landers said, “It’s hard to say what the ultimate outcome would be.”

She said the court’s action in the Texas case, in letting the Texas law go forward before legal issues around it were resolved, was “highly unusual and disappointing.”

“If the justices were all to vote their personal opinion about whether abortion should be illegal or whether the Constitution should prevent states from prohibiting abortion, then you would have to say Roe v. Wade is on thin ice,” she said.

On the other hand, she said, the justices would have to discard five decades of precedent.

“It’s hard to know what they will do because now Roe v. Wade has been precedent for almost 50 years now, right? To change a precedent of that long standing, around which people have organized and relied upon, is a big thing for the court to do and is very rarely done unless there’s a good reason for it,” she said.

Chief Justice John Roberts, she said, “seems to believe in precedent and that the credibility of the court depends on its not being perceived as putting its finger to the political winds and making a decision on that basis.”

#### Roberts & Kavanaugh will be on the majority together refuse to overrule

Robinson 21 – [Kimberly Strawbridge Robinson – reporter Bloomberg Law, May 19th 2021, “Roberts, Kavanaugh Control Fate of Supreme Court Abortion Case”, <https://news.bloomberglaw.com/us-law-week/can-roberts-kavanaugh-find-middle-ground-in-abortion-ruling>, eph]

All eyes will be on Chief Justice John Roberts and Justice Brett Kavanaugh next term when the U.S. Supreme Court considers an abortion dispute that could limit or even overturn a half-century of precedent dating back to the landmark ruling in Roe v. Wade.

At issue is the constitutionality of Mississippi’s 15-week abortion ban, which the conservative U.S. Court of Appeals for the Fifth Circuit said implicated the “central holding of Roe” and therefore couldn’t stand.

Advocates on the left see the case as an existential threat to a woman’s right to terminate a pregnancy, while those on the right say it would only make a “minor tweak” to the court’s precedents.

But one thing they can agree on: the fate of Mississippi’s ban likely rests with conservatives Roberts and Kavanaugh.

The other four Republican-appointed justices—Clarence Thomas, Samuel Alito, Neil Gorsuch, and Amy Coney Barrett—probably would be happy to jettison the court’s current abortion precedent, said Cardozo law professor Kate Shaw.

So “Roberts and Kavanaugh are the two to watch together,” Shaw said.

Risky Business

Roberts and Kavanaugh have emerged as the justices most likely to be in the majority. They usually side with conservatives but occasionally vote with the liberal wing.

Roberts has a reputation as an incrementalist. He wants to avoid sweeping changes in the law and having the court appear political.

There’s a “real risk to the court in changing course very quickly in a way that’s clearly attributable just to personnel changes on the court,” Shaw said. The Roberts Court has often shied away from big abortion rulings, especially in recent terms.

Kavanaugh is cautious like Roberts, said Cato Institute’s Ilya Shapiro.

“Even if in their heart of hearts they want to overturn Roe, they’d want to have some sort of incrementalism,” Shapiro said.

Risk to the court’s credibility likely explains Roberts’ vote last term to invalidate Louisiana abortion restrictions in June Medical Services v. Russo despite voting to uphold nearly identical restrictions out of Texas in Whole Woman’s Health v. Hellerstedt. One major difference between the two cases was the composition of the court, which now had Kavanaugh on it instead of the justice he replaced in 2018, Anthony Kennedy.

“I joined the dissent in Whole Woman’s Health and continue to believe that the case was wrongly decided,” Roberts said in June Medical. But “Louisiana’s law cannot stand under our precedents.”

The question now, Shaw said, is the extent to which Kavanaugh shares those institutional concerns when it comes to overturning the court’s core abortion rulings—what Kavanaugh referred to as “precedent on precedent” during his tumultuous confirmation hearings.

In June Medical, Kavanaugh attempted to find a middle ground, saying that the case wasn’t yet ready for the Supreme Court to weigh in.

If Roberts doesn’t wind up in the majority in this case, that means Thomas—the second most senior justice and the one most hostile to precedent—will be the one deciding who gets to write the majority opinion, Shapiro said, and thus how broadly the ruling reaches.

“Roberts probably wants to avoid that,” Shapiro said, and so “is willing to work hard with Kavanaugh to try to have a controlling opinion.”

Middle Ground?

Shaw noted that it only take four justices to grant a case, even though it takes five to win on the merits.

The court under Roberts has preferred to consider abortion in tangential ways. In recent terms, the court has considered free speech challenges from anti-abortion advocates and the ability of states to set requirements for carrying out abortions. The results have been mixed.

Given that the court agreed to hear Mississippi’s outright ban so shortly after Barrett’s arrival in November 2020, “it’s fair to say that the four really conservative justices—Alito, Thomas, Gorsuch, and Barrett—almost certainly voted to grant,” Shaw said. And perhaps they think “that when push comes to shove they believe they have the votes on the merits.”

Roberts and Kavanaugh, if left to their own devices, would have probably preferred to take up a different kind of abortion challenge, one that would have allowed states to impose restriction but doing so within the court’s current abortion framework. Shaw pointed to challenges to waiting periods and limits on the permissible reasons for getting an abortion.

But it isn’t clear if a middle ground can be found with Mississippi’s all out ban, she said.

“I just don’t think you can sustain a 15 week ban without fundamentally changing—either explicitly or implicitly—the Casey test,” Shaw said, referring to the court’s 1992 ruling in Planned Parenthood v. Casey. In Casey, the justices affirmed Roe‘s recognition of the right to an abortion but changed the standard under which abortion regulations are analyzed to the familiar “undo burden” standard currently employed by the courts.

Casey says explicitly that a ban pre-viability—that is, when the fetus isn’t capable of living outside the womb—can’t be constitutional, Shaw said. “So that part of Casey has to be jettisoned if you are going to uphold this ban.”

Modest Request

John Bursch, who filed an amicus brief in support of Mississippi in the Fifth Circuit, suggested that itself is a middle-of-the-road ruling.

Mississippi isn’t asking for a sweeping ruling that would undo the 1973 Roe decision, he said. “They’re asking for something much more modest than that,” Bursch said.

As Shapiro put it: “Casey is the governing standard and Roe established the right to an abortion. So you can certainly change the governing standard without threatening the underlying right.”

Both acknowledged, however, that the changed standard could work in favor of efforts to limit abortion access, even if Roe remains intact.

### UQ – Lousiana proves

#### Louisiana decision proves Roberts will uphold Roe & convince kavanah

Chotiner 2020 – [Isaac Chotiner - staff writer at The New Yorker, June 29th 2020, “What John Roberts’s Surprise Abortion-Rights Ruling Means for the Future of Roe v. Wade”, <https://www.newyorker.com/news/q-and-a/what-john-robertss-surprise-abortion-rights-ruling-means-for-the-future-of-roe-v-wade>, eph]

Louisiana decision proves Roberts will uphold Roe & convince kavanah In an unexpected 5–4 decision today, the Supreme Court struck down a 2014 Louisiana law that severely restricted access to abortions by mandating that doctors who perform the procedure have admitting privileges at nearby hospitals. If the law had gone into effect, it would have likely left the state with a single abortion clinic. The ruling was the third major case in a week in which Chief Justice John Roberts voted with the Court’s four liberal Justices and rejected a legal argument backed by President Trump and conservative Republicans. The majority’s decision in the case, June Medical Services v. Russo, was written by Justice Stephen Breyer and joined by his three liberal colleagues. Roberts wrote a concurring, “controlling” opinion, which agreed with the majority despite his dissent in a similar case, in 2016, involving a nearly identical law in Texas. “The result in this case is controlled by our decision four years ago invalidating a nearly identical Texas law,” Roberts wrote.

To talk about what this decision means for the future of abortion rights and the Supreme Court, I spoke by phone with Mary Ziegler, a law professor at Florida State University and the author of the new book “Abortion and the Law in America: Roe v. Wade to the Present.” During our conversation, which has been edited for length and clarity, we discussed why Roberts came to the conclusion he did, what the dissents of Justices Gorsuch and Kavanaugh tell us about the Court’s two Trump appointees, and what signals the Court sent about the future of Roe v. Wade.

What is the importance of today’s decision?

In the short term, it pauses the death of abortion rights. We have also seen the emergence of a new swing Justice on abortion, in John Roberts. But I think people are going to read this as a win for abortion rights to a much greater extent than it is. Roberts’s opinion was unambiguously skeptical of abortion rights. He made the point that the correct reading of the undue-burden standard, which is still the doctrine that applies to abortion, only resulted in one restriction being struck down in the original Planned Parenthood v. Casey decision, in 1992. And I think that pretty much captures what Roberts thinks is right in terms of how protected he thinks abortion rights should be. But Roberts, I think, unlike Brett Kavanaugh, wants to look as if he cares about precedent. And he couldn’t in good conscience do that while voting to uphold this law. So it means that respect for precedent will carry some kind of weight with this majority. But it also means that, if there is some way to convince Roberts that he can save face and still undo abortion rights, he will probably take it.

What does Roberts’s decision to defer to a precedent from four years ago suggest about how he might feel about deferring to a decision from nearly thirty years ago, Casey, or to Roe, which is nearly fifty years ago?

That’s the challenge for abortion opponents. Roberts is clearly an abortion-rights skeptic, as he made apparent today, but he also has an investment in precedent. And to your point, Roe and Casey are precedents, too. I think the most obvious strategy, if you are an abortion opponent, is to gut abortion rights without gutting abortion precedents. In other words, to say that women still have a right to an abortion but to functionally eliminate access to abortion. That is much more likely. There is nothing stopping someone like Roberts from doing that, and I think, if anything, the tools for doing that are already present in Casey and the decisions following it.

It’s a different question if you are looking for him to come out and say, “Roe and Casey are gone.” There is still a path to doing that, too, but only a very gradual one, which would make it seem as if this Court had really taken this seriously and grappled with it for a while and not just put Brett Kavanaugh on the Court and overturned Roe overnight—which is what conservatives seem to have been expecting.

In March, you wrote an Op-Ed for the Times, which read, in part, “So why is Louisiana—and, by proxy, abortion’s most sophisticated opponents—taking this approach? The answer is simple: Leading anti-abortion groups believe that arguing harm to women—not fetal rights—is the key to convincing both the court and the nation to let go of Roe v. Wade.” Does the decision they made today make you think you misjudged that?

Yes and no. There is a kind of popular-opinion protection for Roe. People think women want abortion rights, and the public supports abortion rights because abortion access makes women more equal. I think abortion opponents are correct to worry that, if that persists, the Supreme Court—and maybe any Supreme Court—will struggle to overturn Roe. I think it was a mistake to focus on that strategy, insofar as you were asking Roberts to uphold a law identical to one the Court struck down four years ago. And, for a Chief Justice who is deeply concerned about the Court’s reputation and also about optics, that was going to be a heavy lift from the beginning. So it may not have been a mistake to focus on women, but it was a mistake to focus on this law, which the Court had already weighed in on.

Are there other kinds of laws working their way through the courts that may end up being better targets for the anti-abortion movement?

Yeah, absolutely. Probably the most obvious are ones that are extensions of the Supreme Court’s decision in Gonzales v. Carhart, a 2007 decision that focused on later abortions. So, a twenty-week-abortion ban that bans abortions based on the theory that fetal pain is possible. They leveraged this idea in Gonzales that, if there is scientific uncertainty, the tie goes to the legislature. You can also leverage the fact that the Court has been more willing to uphold abortion restrictions later in pregnancy rather than earlier, and the idea that fetal viability—which is a little bit murky—does change as technology changes. So-called “dismemberment bans,” which outlaw dilation and evacuation (which is the most common second-trimester-and-after procedure), leveraged the idea, in Gonzales, that you can ban one procedure without it violating the Constitution. This focus on later abortions resonates better with voters, as well as with the Court, which isn’t an accident. And then, more recently, you have so-called “reasons bans.” You saw ones come out of Tennessee and Mississippi in the last couple of weeks, and they ban abortions for reasons of race, sex, or disability. The Court decided to not decide on one of those last year, but all of them are promising if you are an abortion opponent looking to unravel abortion.

Were there any aspects of the conservative dissent that you found particularly notable for thinking about the future of these matters?

I think Justice Gorsuch’s dissent was pretty notable. He was channelling a pretty common anti-abortion argument that is called the “abortion distortion” argument, which says that Roe is bad not just because it was wrongly decided but that it has also warped a lot of other aspects of American law. That was straight out of an anti-abortion brief. And if anyone had any doubts about whether Neil Gorsuch was going to be a swing vote on abortion, as he was in the Bostock case on L.G.B.T.Q. discrimination, this case puts those doubts to rest pretty clearly.

Kavanaugh, I think, is very much trying to seem as if he respects precedent, as he promised Susan Collins in their interactions prior to his confirmation. But I think he feels less compunction about departing pretty quickly from precedent if he thinks he can argue the facts on the ground are different.

How does Kavanaugh argue that the facts are different, and do you find his argument convincing at all?

He was following the same strategy that Justice Alito was following, essentially saying that doctors in Louisiana didn’t try hard to get admitting privileges and that it wouldn’t be as big of a deal in terms of abortion-clinic closures. You can always make arguments about the facts, which is why the undue-burden standard is, in some ways, devilishly difficult for supporters of abortion rights.

Under the liberals’ approach, which Justice Roberts doesn’t like, you have to ask whether a law has a benefit or adds any value. And the Court had said no pretty clearly four years ago—that the Texas law didn’t make patients any safer. And I think Roberts was struggling with that, too. If precedent says this kind of law is pointless, it is probably pointless in Louisiana, too.

Roberts has overruled precedent before, and these Justices are all human. Do you think there is something going on here, specifically?

I think Roberts respecting precedent is a real thing. I think it is also different for someone who cares about the Court’s institutional legitimacy and legacy to be the guy who voted to overturn Roe. It is different to say Roe is wrong and complain about it and write endless dissents about it, versus to be the person who pulls the trigger. And so, if you were going to get something hopeful about today’s decision from Roberts, it is that he is uncomfortable with that—and the idea that precedent matters resonates with him up to a point. That is a pretty powerful weapon for pro-choice people going forward. They are just going to have to wield it with a Justice who doesn’t really believe in abortion rights. That’s the bad news. In terms of the underlying substance, they have nothing. But that has been enough before. There have been lots of Justices who have been skeptical of abortion rights who have hesitated when the moment came to get rid of Roe, and there is some hope, after this case, that Roberts will be the same.

#### Kavanaugh upholds roe, but the plan makes him appear too liberal causing him to flip

Gongloff 8/22 – [Mark Gongloff - Bloomberg Opinion Columnist, August 22nd 2021, “Roe v. Wade’s Fate May Be in Brett Kavanaugh’s Hands”, <https://www.bloomberg.com/opinion/articles/2021-08-23/roe-v-wade-s-fate-may-be-in-brett-kavanaugh-s-hands>, eph]

Before Brett Kavanaugh became known to Americans as The Guy Who Liked Beer, he clerked for Supreme Court Justice Anthony Kennedy, who had long been the high court’s swing vote. Kennedy pushed for Kavanaugh to replace him, which suggests he hoped his protege would take his place in the court’s center.

Sure enough, that’s exactly what happened, as you can see in this SCOTUSblog chart of the percentage of decisions in which each justice voted with the majority:

A picture containing graphical user interface

Description automatically generated

Of course, the court’s “center” is further to the right than it was for much of Kennedy’s time. Then again, the high court’s latest term offered several disappointments for conservatives, including when they protected the Affordable Care Act for a third time (just seven more ACA defenses, and the justices get a free sandwich).

The real test of Kavanaugh’s swing-vote stuff is coming soon, though, writes Noah Feldman. In its next term, the high court will rule on Mississippi abortion restrictions, in the case of Dobbs v. Jackson Women’s Health Organization. This decision could overturn Roe v. Wade and a 1992 decision upholding Roe, Planned Parenthood v. Casey. Kennedy infuriated conservatives by joining the majority in Casey. Will Kavanaugh follow Kennedy’s lead in Dobbs? One key question is how much cachet he is willing to sacrifice with conservatives to burnish his reputation with liberals. Read the whole thing.

#### The plan causes institutional balancing – SCOTUS couples the plan’s liberal ruling with an equal and opposite conservative ruling overturning Roe – Cohen and Ventoruzzo

#### Capital is finite and spills over---the Court will seek to balance decisions based on external constraints

HLR 11 – Harvard Law Review, “ADVISORY OPINIONS AND THE INFLUENCE OF THE SUPREME COURT OVER AMERICAN POLICYMAKING”, June, 124 Harv. L. Rev. 2064, Lexis

In assessing the Court's power relative to the elected branches, it is first necessary to be clear about what motivates the Supreme Court. When exercising judicial review, the Court seeks to vindicate its constitutional vision by striking down legislation repugnant to that vision. This is true whether one believes that the Court seeks in good faith to divine the true meaning of the Constitution and impose it on the elected branches, attempts to interpret the Constitution faithfully but subconsciously imports its own policy views, or disingenuously strives to implement its policy preferences in the guise of neutral interpretation. For the purposes of the present argument it is irrelevant which view or combination of views is most accurate, and the phrase "constitutional vision" will stand for any and all of these. Yet as suggested above, the Court is not unconstrained when it seeks to effect its constitutional vision through judicial review: if it strays too far from the political mainstream, n55 it will face consequences that undermine its constitutional [\*2076] vision even more than would the upholding of a disfavored statute. n56 The upshot is that the Court operates under conditions of scarcity and must economize on its political capital to go as far in implementing its constitutional vision as political realities allow, which sometimes means upholding (or declining to review) government actions that contravene that vision. n57 And, as a distinct matter, most [\*2077] Justices have displayed a desire to conserve the Court's political capital and maintain its institutional prestige as much as possible even where the Court was not immediately threatened with any hard political constraints. n58 This conservatism is especially understandable given that the Justices are generally not political experts and lack the sophisticated public relations apparatuses of the elected branches, and that the elected branches have substantial capacity to shift public opinion about the Court if they so choose; these factors make it rational for the Court to be parsimonious with its political capital in order to avoid blind overreaching.

[FOOTNOTE]

n57. Thus, the Court's decisionmaking process in a judicial review case incorporates its internal preferences and its view of external constraints as follows: R = B / C, where B equals the benefits to the Court's constitutional vision of invalidating a given piece of legislation, C stands for the cost the Justices expect to incur in terms of political capital, and R gives the trade-off rate between costs and benefits in any given case, such that the Court will expend its political capital in those cases where R is highest, so long as R > 1.

A reasonable objection to the model elaborated in this Part is that although the Court is politically constrained, this "bank account" model in which the Court has finite political capital to "spend" by striking down popular government actions is unrealistic: the Court can also increase its prestige - its institutional capital - by exercising judicial review, which has been the effect of Marbury and Brown, two decisions without which the Court would be much weaker now. Nonetheless, most countermajoritarian decisions do seem to cost the Court rather than increase its capital (Marbury was a refusal to make the countermajoritarian decision, see Friedman, supra note 53, at 60-62, and Brown jeopardized rather than solidified the Court's power over the years immediately following the decision, see Klarman, supra note 53, at 312-43). This is especially true in the short run, while the decision remains countermajoritarian, and it is the short run that counts for the current Justices: the fact that Brown is today sacrosanct did not help the Court when Southern resistance threatened that decision's efficacy in the years immediately after its announcement. Cf. Daryl J. Levinson, Parchment and Politics: The Positive Puzzle of Constitutional Commitment, 124 Harv. L. Rev. 657, 743 (2011) ("Evidently, the Court can build up a savings account of approval that it can then spend down by issuing unpopular decisions without losing public support."). The necessary implication of Levinson's statement is that the "savings account" - and thus the Court's countermajoritarian capacity - is finite. At any rate, the Court's position is no different from that of any other political actor: though the presidency as an institution, for instance, would certainly lose influence as a result of a string of weak, unassertive presidents, and might gain it through the acts of a strong leader, any given President at any given time is undoubtedly limited by political constraints.

#### They’ll pair decisions to preserve PC

Bazelon 15 (Emily Bazelon is a staff writer for the magazine and the Truman Capote Fellow at Yale Law School, Marriage of Convenience, 2-1, New York Times, l/n, y2k)

When Roberts was nominated to be chief justice 10 years ago by President George W. Bush, he exuded calm neutrality at his confirmation hearing, comparing judges to umpires who call balls and strikes. At the end of his first term, he emphasized the importance of the court's ''credibility and legitimacy as an institution,'' in an interview with the George Washington University law professor Jeffrey Rosen.

But in 2010, Roberts supplied the fifth vote for the court's remarkably unpopular ruling in Citizens United. By striking limits that Congress set on campaign spending by corporations, the court was perceived as favoring the interests of the wealthy. The court's approval rating fell 10 percentage points, to barely break even, from 61 percent.

Since then, the court has fared better with the public when it pairs conservative decisions with progressive ones. And same-sex marriage is part of that equation. In 2013, the term ended with a splashy ruling in which five justices -- Roberts not among them -- struck down part of the Defense of Marriage Act, which restricted federal benefits for spouses to male-female couples. This decision came one day after the court gutted a central component of the Voting Rights Act, in a 5-to-4 decision written by Roberts.

#### The plan causes controversy that drains PC and causes vote switching on other issues

Smith 6 – Adam M. Smith, M.Phil. in Politics from Oxford, J.D. from Harvard, Senior Editor of the Harvard International Law Journal and Chayes International Public Service Fellow, “Making Itself at Home Understanding Foreign Law in Domestic Jurisprudence: The Indian Case”, Berkeley Journal of International Law, 24 Berkeley J. Int'l L. 218, Lexis

A second similarity between the American and non-American discussion is perhaps even more fundamental to the debate: a base premise of the discussion, in almost any of its guises, is that judges play an autonomous role in the process [\*229] of using foreign law. Examinations of the "motives" driving national courts to engage in particular actions, 62 suggestions that courts select from among a set of "modes of interpretation" 63 when borrowing constitutional doctrines, or arguments that judges can choose whether to "receive" foreign law or engage in a "dialogue" with foreign jurisdictions, 64 assume significant freedom on the part of jurists. Such theories imply that judges have the flexibility to act to incorporate or disregard foreign precedents. However, as this essay will attempt to demonstrate, this is not necessarily an accurate description of the judicial position in almost any domestic system and thus might not correctly describe how foreign law is incorporated or ignored in domestic judicial jurisprudence. Complete judicial independence - even in the most consolidated and longstanding of democracies - is illusory; judges remain a part of the social and political fabrics of their societies, a position that both empowers them and critically constrains the choices they make on the bench. 65 The use or neglect of foreign law is one aspect of these limitations. Dependent upon institutional strength, esteem, and wider social goals, courts may be severely constrained in all aspects of their decision making, including their use of foreign law. For example, judges in a newly independent state may be reticent to refer to the law of the former colonial power for fear that doing so would stunt the nation-building process and brand their branch as ante bellum. In such situations, reference to laws of different jurisdictions (the former metropole compared with others, for example) would have different impacts and meanings. More prosaically, courts may be bound by explicit political decisions which likewise put pressure on their resort to foreign precedent. States' members of the Council of Europe, legally bound by the decisions of the European Court of Human Rights, compel their domestic judiciaries to take into account precedents emanating from the Strasbourg court. 66 The prerogative of judges in these forty-six countries not to use foreign law is progressively more limited due to decisions by their governments to more closely integrate their law with neighboring states. This complex interplay between court and society suggests a further dimension over which foreign law is played out in domestic jurisprudence that has been similarly lacking from the debate. Judges and societies are dynamic entities, with their powers and competencies in constant flux. The resort to foreign law, inter alia, is a result of the perpetual dialectic between the two, with [\*230] the use or absence of foreign law in specific cases helping to elucidate the current relationship between courts and other social bodies. For instance, in a post-colonial state, a period during which the courts manifest a desire to reduce reliance on the colonial power's laws will sometimes be followed by a re-recognition of the value of the colonial system's precedents. This process - which occurred in India - may indicate the end of the post-colonial, independence phase of nation building, and the beginnings of a more nuanced relationship between former colonialists and colonizers. Seen in this light, the American debate regarding the use of foreign sources is less remarkable, and "the rejection of foreign law by the U.S. Supreme Court ... can be seen as a response to both local and global influences." 67 Since Marbury v. Madison, 68 the U.S. courts have built a strong place within the political structure, confident that their rulings will be obeyed. In general, the Court's confidence has proven warranted. 69 In support of the "isolationist" school, there is arguably enough history and esteem for today's U.S. courts to rely solely on their own precedents. Though the "domestic" principles on which isolationists would like the courts to rely are likely proximately related to non-municipal law, the connection is sufficiently attenuated to satisfy supporters of the doctrine. Further, the executive and legislative branches, by limiting extra-territorial legal entanglements, 70 have rarely, if ever, required the judiciary to consider foreign law. In addition, the United States is large and heterogeneous enough to keep producing novel, complex legal problems on which domestic courts will be able to draw. 71 Yet, despite the unique strengths of the American judiciary and the ability of the courts, especially with regards to analyses of fundamental rights, to be insulated "from the vicissitudes of political controversy," [**72**](http://www.lexis.com/research/retrieve?_m=2887e30877f97bc6d54ea9380d690c07&docnum=5&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAl&_md5=24da67bfb7414b666ee47af52e02474a&focBudTerms=Globalization%20and%20the%20International%20Impact%20of%20the%20Rehnquist%20Court&focBudSel=all#n72) even the independence of American jurists is in some doubt. Mishler and Sheehan have argued that U.S. Supreme Court justices (who are lifetime appointees) remain [\*231] nonetheless "broadly aware of fundamental trends in ideological tenor of public opinion, and that at least some justices ... adjust their decisions ... to accommodate such fundamental trends." 73 Given the importance of the issue of foreign law usage - manifested, in part, by the fervency of the debate - it seems reasonable to suggest that the use or nonuse of such precedents may be among the "fundamental trends" to which Justices respond.

#### They say voting for popular MLB will build PC-Popular decisions don’t build capital and backlash outweighs

Mondak 97 – Jeffrey J. Mondak, Professor of Political Science at Florida State University, “The Dynamics of Public Support for the Supreme Court”, Journal of Politics, 59(4), p. 1122-1123

Even though most Supreme Court decisions are consistent with public preferences (Barnum 1985; Marshall 1988, 1989), there appears to be some danger for the Court in the basic pattern of public reaction. People offer little credit when leaders are perceived to have acted correctly because actions consistent with a person’s preferences may be viewed as nothing more than the leaders performing as they should. In contrast, people hold political leaders accountable when those leaders are perceived to have done wrong, suggesting that the alienating effects of unpopular decisions may be considerable. Both psychologists (e.g., Fiske 1980; Skowronski and Carlson 1987, 1989) and political scientists (e.g., Lau 1982, 1985) recognize the existence of such a negativity bias in decision making. If this bias affects evaluations of the Supreme Court, then we should expect negative reactions to have greater weight than positive reactions as determinants of institutional support (see Durr and Wolbrecht 1995; Grosskopf and Mondak 1996). In Adamany and Grossman’s (1983) survey of Wisconsin residents, most people who could name a Supreme Court decision named one they disliked. Similarly, in both waves of their panel survey Tanenhaus and Murphy (1981) found that dislikes far outnumbered likes when respondents were asked to evaluate the Supreme Court’s decisions and policies. More recently, an analysis of public response to Webster and Texas v. Johnson demonstrates that confidence in the Court declined among respondents who approved of one ruling while opposing the other, suggesting that support for one decision is insufficient to offset opposition to another (Grosskopf and Mondak 1996). This apparent negativity bias underlies our third proposition:

### 2NC – Stem Cells\* which they had no answers too meaning that our impact outweighs

#### Overruling Roe wrecks disease research – a ruling that establishes personhood for life at conception destroys access to embryonic stem cells – Baumann

#### New pandemics are inevitable and cause extinction – naturally occurring bacteria harbor viruses capable of extinction – preventive measures are vital – Diamandis

#### Even if they win burnout prevents total extinction, billions of deaths still outweigh

### 2NC – Fetal Tissue Solves Disease

#### Fetal tissue vital to disease research – abortion access is key

Boonstra 16 – [Heather D. Boonstra - Vice President for Public Policy at the Guttmacher Institute, February 9th 2016, “Fetal Tissue Research: A Weapon and a Casualty in the War Against Abortion”, [https://www.guttmacher.org/gpr/2016/fetal-tissue-research-weapon-and-casualty-war-against-abortion#](https://www.guttmacher.org/gpr/2016/fetal-tissue-research-weapon-and-casualty-war-against-abortion), eph]

Fetal Tissue Research: A Weapon and a Casualty in the War Against Abortion

The debate over using human fetal tissue in medical research came roaring back on the national policy agenda last summer when a group of antiabortion activists began releasing deceptively edited videos about Planned Parenthood’s handling of fetal tissue donations for this purpose. Fetal tissue research dates back to the 1930s, and has led to major advances in human health, including the virtual elimination of such childhood scourges as polio, measles and rubella in the United States. 1,2 Today, fetal tissue is being used in the development of vaccines against Ebola and HIV, the study of human development, and efforts to treat and cure conditions and diseases that afflict millions of Americans.

To ensure it meets the highest ethical standards, fetal tissue research has been subject to stringent laws and regulations for decades. Abortion foes are now accusing health care providers and researchers of violating these laws and ethical standards, in hopes of undermining the right to abortion and ending fetal tissue research. These attacks not only threaten sexual and reproductive health and rights, but also pose a threat to the large numbers of people who could benefit from fetal tissue research, given the wide range of conditions that such research might ameliorate. Any impediment to ongoing scientific inquiry in the field caused by the current controversy would have substantial consequences.

IMPORTANCE OF FETAL TISSUE RESEARCH

Unlike embryonic stem cell research, which uses cells from days-old embryos created through in vitro fertilization, fetal tissue research uses tissue derived from induced abortion of pregnancies at or after the ninth week. 1,3 (Fetal tissue obtained from a miscarriage is often not suitable for research purposes because of concerns about potential chromosomal abnormalities that led to the miscarriage. 3) Researchers most often acquire fetal tissue from a tissue bank or, sometimes, directly from a hospital or abortion clinic. 4

Because it is not as developed as adult tissue and is able to adapt to new environments, fetal tissue is critical to the study of a wide variety of diseases and medical conditions, according to the American Society for Cell Biology. 1 Researchers use fetal tissue—and cell cultures derived from such tissue, which can be maintained in a laboratory environment for decades—to study fundamental biological processes and fetal development. According to the U.S. Department of Health and Human Services, fetal tissue continues to be an important resource for researchers studying degenerative eye disease, human development disorders such as Down syndrome, and early brain development (relevant to understanding the causes of autism and schizophrenia). 2

Fetal tissue has also been used to develop vaccines that have saved and improved the lives of billions of people worldwide. 1,2,5 The 1954 Nobel Prize in Medicine was awarded for work using cell cultures originating from fetal tissue that led to the development of the polio vaccine. Vaccines for diseases such as measles, mumps, rubella, chickenpox, whooping cough, tetanus, hepatitis A and rabies were also created using fetal cell cultures, and researchers are now using fetal cells to develop vaccines against other diseases, including Ebola, HIV and dengue fever.