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Exemptions T

#### The scope of antitrust law is exclusively bounded by exemptions and immunities

ABA 7 (American Bar Association, ABA Section of Antitrust Law, Monograph 24, “Chapter 1 Introduction,” *Federal Statutory Exemptions from Antitrust Law*, American Bar Association, 2007, ISBN: 978-1-59031-864-5, pp.4-7)

A. Background: The Broad Scope of Antitrust, and an Introduction to Statutory Exemptions

Because this monograph concerns statutory constraints on the reach of antitrust law, a word is in order about the broad scope of antitrust principles.

Sherman Act sections 1 and 2 apply to “trade or commerce among the several States, or with foreign nations,”11 but the act leaves that phrase undefined. The Clayton and Federal Trade Commission Acts both define the “commerce” to which they apply,12 but give it only a jurisdictional meaning similar to that under the Commerce Clause of the federal Constitution.13 The courts have thus been left to decide just how broadly antitrust applies. Despite some uncertainty in the first half of the twentieth century,14 and with one lingering exception,15

**[FOOTNOTE 15]**

15. Namely, neither the Court nor Congress has ever overruled the Court’s sui generis 1922 rule that professional baseball is not “commerce.” See Fed. Club. 259 U.S. at 209.

**[/FOOTNOTE 15]**

modem courts define this scope very broadly. The inclusive modem definition is perhaps the natural culmination of the Supreme Court’s long-held belief that “Congress intended to strike as broadly as it could in Section 1 of the Sherman Act,”16 a view it developed because “[l]anguage more comprehensive” than that in Section 1 “is difficult to conceive.”17

This view probably also reflects the broad definition given to the terms “trade” and “commerce” for various purposes at common law, as some courts have explicitly held that antitrust was meant to incorporate those ideas." Thus, the courts have held generally that any exchange of money for a good or service, between any persons, is in ‘trade or commerce,”19 and the Supreme Court itself has described “commerce” to include any “exchange of...a service for money.’00 Indeed only in very limited, and sometimes exotic, circumstances have modem courts found conduct to be outside the scope of antitrust.21

**[FOOTNOTE 21]**

21. See. e.g., Dedication & Everlasting Love to Animals v. Humane Soc’y of the U.S., 50 F.3d 710 (9th Cir. 1995) (holding that solicitation of gratuitous charitable donations is not trade or commerce).

**[/FOOTNOTE 21]**

Therefore, in the absence of an explicit statutory exemption or a judicially created immunity, and so long as it is in the interstate or foreign commerce of the United States, the giving of essentially anything in return for money or barter is subject to federal antitrust.

Understanding the scope of modem antitrust also requires recognition of contemporary developments that affect enforcement of antitrust and its substantive reach. The United States is one of the few of more than 100 nations with competition laws that permit private antitrust suits.22 U.S. antitrust has permitted those suits dating from the initial adoption of the Sherman Act in 1890,23 and they comprise by far the largest component of antitrust enforcement.24 However, recent caselaw developments may increase barriers to the private lawsuits on which U.S. enforcement heavily depends. During the past thirty years or so, the federal courts have gradually raised doctrinal barriers to private enforcement of federal antitrust law, particularly through the rule of antitrust injury and the developing doctrine of antitrust standing.25 Partly as a result of these developments, private enforcement has declined.26

#### ‘Expand’ must make more expansive---NOT merely clarify existing principles

Terry J. Hatter, Jr. 90, Judge, US District Court, California Central, “In re Eastport Assoc.,” 114 B.R. 686, Lexis

[\*\*10] Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would expand the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing [\*\*11] law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### The AFF just clarifies the application of antitrust to already covered practices – it does NOT curtail an exemption or immunity

#### Vote NEG – eliminating exemptions and immunities provides a limited AND predictable basis for prep, and focuses debates on the balance between antitrust and regulation, ensuring conceptual unity

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

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

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

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

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

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

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

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

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

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

#### Voting issue---key to link uniqueness and preventing bidirectionality on an otherwise virtually unlimited topic. Failing to specify an agent is a voting issue---key to competition, links to core mechanism-based DAs, and education.

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Deadlock DA

#### Bedoya’s confirmation is likely, BUT opposition to the antitrust agenda threatens to indefinitely deadlock meatpacking enforcement – and everything else

Moran 1-6-22 (Max Moran, Research Director of the Personnel Team at the Revolving Door Project, studied International Relations and Journalism at Brandeis University, “Merrick Garland Is Undermining the Biden Antitrust Strategy,” The American Prospect, 1-6-2022, https://prospect.org/justice/merrick-garland-is-undermining-biden-antitrust-strategy/)

The Biden administration is threatening new anti-monopoly enforcement actions against the Big Four meatpacking companies, in part to counter inflation at the grocery store and in part to address decades of exploitation of small farmers. On Monday, the president dispatched Agriculture Secretary Tom Vilsack and Attorney General Merrick Garland to hear grievances from small ranchers, while the White House builds a new web portal to gather complaints. While the White House’s proposals for funding small meat processors to increase competition are rather unsatisfying, the enforcement piece could have a real impact.

This initiative has caused the usual grumbling from neoliberal economists, and the usual corrections to the usual grumbling. But no one has yet explained how Biden plans to actually follow through on his threat—a problem for which Garland is partly to blame.

As The Information’s Josh Sisco reported on Tuesday, there are currently just two deputies trying to manage the entire DOJ Antitrust Division (ATR) alongside Assistant Attorney General Jonathan Kanter, who was confirmed only two months ago. ATR typically has at least 12 deputies and top advisers in the “front office” who oversee about 700 career staffers. And that was under past administrations, which didn’t have nearly as ambitious an antitrust agenda as Biden’s. Reversing four decades of Borkian antitrust sloth requires a cohesive and energetic senior leadership team.

Meanwhile, the Federal Trade Commission, the executive branch’s other main antitrust enforcer, remains in a 2-2 partisan deadlock, as Senate Republicans blockade Biden nominee Alvaro Bedoya from being confirmed as a commissioner. He has a path to 51 Senate votes, but arcane (and unnecessary) procedural hurdles have slowed the process to a crawl, hindering the other avenue to antitrust action.

Biden can only do so much to move Bedoya’s nomination. But in theory, nothing prevents him from hiring whomever Kanter personally trusts to help execute their shared agenda. The deputies at ATR are not Senate-confirmed positions. So what’s causing the chaos?

The problem isn’t procedural; it’s political. In addition to diversity concerns, Sisco reports that “ideological divisions” about anti-monopoly enforcement within the Biden administration are causing fights over any potential selection for the ATR deputies.

These divisions should be familiar to anyone who followed the initial fight over antitrust nominees during the Biden transition last year. While Biden himself seems sold on the benefits of a strong anti-monopoly agenda, Garland testified last year that he sees no problem with hiring big corporations’ preferred defense attorneys to oversee their former firms and clients. Garland and other anonymous voices floated a slew of names to run ATR throughout last year—anyone but Kanter, whom progressives favored.

While Garland lost that initial fight, he seems content to starve Kanter of resources as a work-around, even if it means sabotaging his own president’s agenda. Garland, after all, appears to consider it core to his job to throttle the better parts of the Biden administration for the sake of an imagined apolitical comity. He rushed to the Trump administration’s defense over the objections of the White House many times over the last year, and continues to undermine environmental action wherever he can. It’s perfectly in keeping with his priorities to undermine antitrust enforcement too.

The corporate revolvers and pro-monopoly hacks Garland boosted also haven’t gone anywhere. Again according to Sisco, Sonia Pfaffenroth is now in the mix for one of those coveted jobs in the ATR “front office.” Pfaffenroth revolved from Arnold & Porter into the Obama ATR and back over the last two decades. In private practice, she’s defended pharmaceutical firms, fossil fuel companies, and mining companies from class actions, price-fixing cases, and of course antitrust lawsuits.

One should look to Pfaffenroth’s record from her past stint at ATR to get a sense of what a second go-around might look like. Under the Obama administration, Pfaffenroth blessed tie-ups between Virgin America and Alaska Airlines, as well as US Airways and American Airlines. Today, just four mega-airlines control 80 percent of U.S. air traffic.

Pfaffenroth even approved the $107 billion merger between Anheuser-Busch InBev and SABMiller, allowing 30 percent of the world’s beer market volume and 60 percent of the world’s beer market profits at the time to be controlled by one firm. Today, AB InBev has essentially hacked the multitiered regulatory system that kept the alcohol market competitive for decades. In some cases, AB InBev’s distributors only allow craft brewers to distribute their drinks to retailers if they keep overall production low. This bottlenecking, alongside the pandemic, has been devastating for craft brewers.

Pfaffenroth’s record at ATR reveals someone whose poor judgment has harmed major American industries. But her judgment is reflective of the failed antitrust status quo, and in antitrust and everything else, Garland sees maintaining the status quo as inherently salutary. Where you or I might see bad calls, Garland likely sees jurisprudence executed according to a well-worn book. Whether the book is right or wrong is immaterial, in his eyes.

To state the obvious, Biden ought to reject Pfaffenroth and empower Kanter with deputies ready to throw that book aside, or else his antitrust agenda on meatpacking and everything else will get tossed on the growing pile of broken promises that are cratering his approval ratings. Doing so, however, will require standing up to Garland.

Thus far, Biden has appeared reluctant to do so, for fear of threatening the attorney general’s independence. There’s a kernel of truth here, after the Justice Department was turned into the president’s personal law firm under Trump. But there is a big difference between deploying the DOJ’s resources to help friends and target enemies and ensuring the DOJ has the staff and leadership necessary to execute its policy agenda. One is a blatant abuse of power, the other a clear presidential prerogative.

It’s an awkward situation for a president, but Biden must recognize that achieving his goals—especially the ones that improve working people’s economic fortunes—does far more for the health of the nation than sticking to a failed principle for its own sake. The president badly needs to remember that the buck stops not at Main Justice, but the Oval Office. Biden can demonstrate his commitment to fulfilling his promises and vision by empowering those of his appointees who are showing the necessary courage.

#### It’s NOT about Bedoya – it’s a referendum on the scope of the current agenda – deadlock is the point

Murphy 21 (Kathleen Murphy, Senior Reporter at FTC Watch, former Section Research Manager, Specialist at Congressional Research Service, former Managing Editor at CQ Roll Call and Bill Analysis Editor at Congressional Quarterly, “Bedoya’s confirmation hearing draws closer,” FTC Watch, Issue 1016, 11-1-2021, <https://www.mlexwatch.com/articles/13940/print?section=ftcwatch>)

When Alvaro Bedoya, President Joe Biden’s nominee to the Federal Trade Commission, faces US senators, he will be asked about his scholarly views on privacy. But the hearing also gives senators a chance to assess the agenda of the last FTC nominee they confirmed, Chair Lina Khan.

The Senate Commerce, Science and Transportation Committee is set to consider Bedoya’s nomination, although no hearing date has been set. It’s most likely to occur the week of Nov. 15 or early December, based on the 2021 Senate calendar.

Serving on the FTC means Bedoya, a Georgetown University professor and former congressional lawyer, would end a 2-2 split and give Democrats a majority to implement the chair’s policies. Bedoya, founding director of the Center on Privacy & Technology at Georgetown Law, would replace former Commissioner Rohit Chopra who left Oct. 8 to serve as director of the Consumer Financial Protection Bureau.

Biden nominated Bedoya in mid-September. Khan, meanwhile, started serving as FTC chair in mid-June after an 83-day confirmation process. (See FTCWatch, No. 1002, March 29, 2021.)

‘99% about FTC Chair Lina Khan’

Michael Keeley, co-chair of the antitrust practice at Axinn, Veltrop & Harkrider, tweeted: “Bedoya confirmation is going to be 99% about FTC Chair Lina Khan, and 1% to do with Alvaro Bedoya. (And hopefully 0% about the Vertical Merger Guidelines.)”

Keeley said he expects the focus of the hearing to be assessing the wisdom of the policies being pursued by Khan.

#### Plan expands opposition, derailing confirmation

Kovacic 20 (William E. Kovacic, former FTC Chair, Global Competition Professor of Law and Policy, George Washington University Law School, JD Columbia University, “Keeping Score: Improving the Positive Foundations for Antitrust Policy,” U. of Pennsylvania Journal of Business Law, 23(1), 2020, https://scholarship.law.upenn.edu/jbl/vol23/iss1/3/)

THE POLITICAL ASSAULT ON THE FTC

From the late 1960s through the 1970s, the FTC pursued an extraordinarily ambitious agenda of competition and consumer protection matters.107 Significant antitrust litigation included challenges to dominant firm misconduct and collective dominance, distribution practices, horizontal restraints, and facilitating practices. 108 Many matters involved powerful economic interests,109 and in a number of cases the Commission sought structural relief in the form of divestitures or the compulsory licensing of intellectual property. 110 In 1974, the agency also initiated a program that required certain large firms to provide “line-of-business” data concerning a range of performance indicators.111

In the same period, the Commission used a mix of litigation and rulemaking to transform its consumer protection agenda.112 Through policy guidance and litigation, the agency introduced its advertising substantiation program that required firms to have support for factual claims made in their advertisements.113 The Commission initiated over twenty-five rulemaking proceedings and promulgated final rules involving a broad collection of product and service sectors.114

As a group, the FTC’s competition and consumer protection initiatives aroused fierce opposition from the affected firms and industries, which contested the agency’s actions in court and before Congress. 115 The complaints of industry resonated with a large, powerful bipartisan coalition of legislators116 who criticized the Commission’s activism, proposed various measures to curb the agency’s authority, 117 and ultimately adopted a number of restrictions in The Federal Trade Commission Improvements Act of 1980 (FTC Improvements Act). 118 In 1980, bitter opposition to elements of the FTC’s competition and consumer protection programs led Congress to allow the FTC’s funding to lapse, forcing the agency to temporarily cease operations. 119 Perhaps emboldened by the weak political support the Commission enjoyed before 1981, when the Democrats controlled the White House and both chambers of Congress, the Reagan administration briefly resumed the assault on the agency’s funding. In January 1981, David Stockman, Ronald Reagan’s first Director of the Office of Management and Budget (OMB), launched a short-lived effort to eliminate funding for the FTC’s competition policy program.120

The congressional and executive branch officials who criticized the FTC in this period advanced two positive claims to justify recommendations for withdrawing authority or funding for the Commission. One claim was that the agency’s choice of competition and consumer protection programs had contradicted congressional guidance about how the FTC should use its authority and resources.121 Many legislators complained that the agency had disregarded the legislature’s preferences and used its powers in ways that Congress never contemplated to fall within the FTC’s remit.122 As Congress considered bills in 1979 to limit the Commission’s powers, Congressman William Frenzel captured the prevailing legislative mood:

It is bad enough to be counterproductive and therefore highly inflationary, but the FTC compounds its sins by generally ignoring the intent of our laws, and writing its own laws whenever the whimsey strikes it . . .

Ignoring Congress can be a virtue, but the FTC’s excessive nose-thumbing at the legislative branch has become legend. In short, the FTC has made itself into virulent political and economic pestilence, insulated from the people and their representatives, and accountable to no influence except its own caprice.123

The Commission, Frenzel concluded, was “a rogue agency gone insane.”124

The accusation of Commission disobedience figured prominently in Senate deliberations on the 1980 FTC Improvements Act. In less-flamboyant but still pointed terms, the chief Senate sponsors of the FTC Improvements Act said restrictions were necessary to curb the agency’s unauthorized adventurism. Senator Howard Cannon explained: “The real reason that we have proposed this legislation for the FTC is because the Commission appeared to be fully prepared to push its statutory authority to the very brink and beyond. Good judgment and wisdom had been replaced with an arrogance that seemed unparalleled among independent regulatory agencies.”125

The accusation of disregard for congressional will soon echoed in statements by high level officials in the newly arrived Reagan administration. OMB Director Stockman recited a variant of this theme in an appearance before a House of Representatives Committee early in 1981 to address his proposal to eliminate funding for the agency’s competition mission. Stockman said, “ . . . in recent years the FTC has served the public interest very poorly, in major part because it has sought to expand its power and influence beyond that envisioned by Congress.”126

Beyond generalized claims of institutional disobedience, the accusation of disregard for congressional will was invoked to justify proposals to impose restrictions on specific FTC initiatives. For example, in the fall of 1979, the Senate Commerce Committee held hearings on a proposal by Senator Howell Heflin to eliminate the FTC’s power to order divestiture or other forms ofstructural relief in non-merger cases.127 This was a shot across the bow of the FTC’s pending “shared monopoly”128 cases involving the breakfast cereal and petroleum refining sectors, where the FTC had requested structural relief (divestitures and, in the cereal case, compulsory trademark licensing) to restore competition.129 Congress did not adopt the Helfin proposal, but the idea of eliminating or restricting the FTC’s power to seek divestiture remained a serious threat to the agency. Roughly a year after the Commerce Committee hearings on the Heflin amendment, on the day before the balloting in the 1980 presidential elections, Vice-President Walter Mondale appeared at a campaign rally in Battle Creek, Michigan (the headquarters of the Kellogg Company). The Vice-President assured his audience that, if he and President Jimmy Carter were reelected, the Carter administration would seek legislation to ban the FTC from obtaining divestiture in the breakfast cereal shared monopolization case.130

A second, related claim was that the FTC had abandoned any adherence to sound administrative practice and descended into utterly irrational decision making. The agency was not merely disobedient (“rogue”) but crazy (“insane”), as well.131 Here, again, Congressman Frenzel pungently made the point. The FTC, Frenzel said, “is a king-sized cancer on our economy. It has undoubtedly added more unnecessary costs on American consumers who it is charged with protecting, than any other half dozen agencies combined.” 132 David Stockman’s initial broadside against the Commission in February 1981 echoed this sentiment. In a newspaper interview, Stockman said the FTC “is a passel of ideologues who are hostile to the business system, to the free enterprise system, and who sit down there and invent theories that justify more meddling and interference in the economy.”133

The accusation of disobedience and the diagnosis of insanity fit poorly, or at least awkwardly, with the positive record of the FTC’s activities in the 1970s. As discussed immediately below, the rogue agency story clashes with the many instances, especially between 1969 and 1976, in which congressional committees and key legislators directed the agency to carry out an aggressive, innovative enforcement program against major commercial interests. In 1969, numerous legislators endorsed the view of two external studies that the FTC had used its authority timidly and ineffectively.134 Leading members of Congress demanded that the agency transform its competition and consumer programs or face extinction.135

Congress described the content of the desired transformation in several ways. At a high level, oversight committees and individual legislators called for a dramatic boost in the agency’s appetite to undertake ambitious, risky projects—to replace a cautious, risk-avoiding decision calculus with a bold philosophy that erred in favor of intervention and used the agency’s elastic powers innovatively. Congress’s admonition to be aggressive and use power expansively emerged again and again in confirmation proceedings and routine oversight hearings.136 During hearings in 1970 to confirm Caspar Weinberger to be the Commission’s new chair, Senator Warren Magnuson, Chairman of the Senate Commerce Committee, told the nominee to “maintain the right kind of morale by recruiting strongly and expanding . . . Trade Commission programs in order to perform the job well.”137 In setting out this charge, Magnuson seemed to recognize that the FTC would have to be steadfast in resisting backlash—including from Congress—that would emerge as the FTC went about “expanding” its programs. The Commerce Committee Chairman said Congress was calling on the FTC to perform “tasks that require a great deal of attention and a great deal of fortitude not to respond to any pressures that come from any place.”138

Weinberger’s successor, Miles W. Kirkpatrick, received similar, and even more explicit congressional guidance, to apply the Commission’s powers broadly and aggressively. In 1969, Kirkpatrick had chaired a blueribbon American Bar Association panel whose report recommended the FTC implement an ambitious antitrust agenda that involved significant doctrinal, operational, and political risks.139 In his appearances as FTC chair before congressional committees, Kirkpatrick often heard legislators applaud the risk-preferring approach of the ABA study. In Kirkpatrick’s first appearance before the Commission’s Senate Appropriations subcommittee in 1971, the Subcommittee Chairman, Senator Gale McGee, provided the following guidance:

I think this is one of the Federal commissions that has a much larger responsibility and capability than sometimes it has been willing to live up to for reasons of congressional sniping at it in some respects or pressures put on it through the industry and the like.

Too often it has been either shy or bashful. . . . That is why we were having a rather closer look at your requests just in the hopes of encouraging you, if anything, to make mistakes, but I think the mistakes you are to make ought to be mistakes in doing and trying rather than playing safe in not doing. I believe that is the most serious mistake of all . . . you are not faulted for making mistakes. You may be for making it twice in a row, for not learning properly but, we would rather you make a mistake innovating, trying something new, rather than playing so cautiously that you never make a mistake. . . . 140

In his appearance before the same subcommittee a year later, Senator McGee observed with approval that Kirkpatrick had “responded to the criticism . . . by both Mr. [Ralph] Nader and the American Bar Association by moving aggressively against some of the major industries in the United States.” 141 Recognizing that the approach he described could elicit opposition from affected business interests, McGee promised that he and his colleagues would exercise best efforts to watch the agency’s back: “[I]f you step on toes you are going to catch flak for it, but I hope we will be able to push this even more aggressively by backing you more completely with the kind of help that I think you require.”142 McGee closed the proceedings with militant instructions:

“Stay with it and flex your muscles, clinch your fists, sharpen your claws, and go to it. We think this is desperately important in the interest of the Congress, whose creature you are, and the consumer whose faith and substantive capabilities in surviving hang very heavily upon what you succeed in doing.”143

Kirkpatrick served as the FTC’s chair for just over twenty-nine months. The Commission’s new chair, Lewis Engman, received the same policy guidance that Congress had provided Weinberger and Kirkpatrick. At Engman’s confirmation hearing before the Senate Commerce Committee early in 1973, Senator Frank Moss observed:

Under . . . Weinberger and Kirkpatrick, the Commission has taken on new life beginning with the search for strong and imaginative, rigorous developers and enforcers of the law and reaching out with innovative programs to restore competition and to make consumer sovereignty more than chamber of commerce rhetoric. 144

With evident approval, Moss recounted how the FTC had “stretched its powers to provide a credible countervailing public force to the enormous economic and political power of huge corporate conglomerates which today dominate American enterprise.” 145 The members of the Senate Commerce Committee, Moss concluded, “consider it one of our solemn duties to protect the Commission from economic and political forces which would deflect it from its regulatory zeal.” 146 Member after member of the Commerce Committee echoed Moss’s message to Engman. Senator Ted Stevens, an Alaska Republican, told the nominee, “I am really hopeful that . . . you will become a real zealot in terms of consumer affairs and some of these big business people will complain to us that you are going too far. That would be the day, as far as I am concerned.”147

The FTC got the message. The words and actions of Weinberger, Kirkpatrick, Engman, and other FTC leaders in this period reflected a preference for boldness, aggressiveness, innovation, and zeal. In a letter to Senator Edward Kennedy in July 1970, Weinberger reported that the FTC was trying “to make the most of that other resource given to us by Congress – our statutory powers.” 148 Weinberger said the Commission had “encouraged the staff to make recommendations to us which will probe the frontiers of our statutes,” had made progress in “[p]robling the outer limits” and “exploring the frontiers” of the agency’s authority, and had shown it “is receptive to novel and imaginative provisions in orders seeking to remedy unlawful practices.”149 In a speech to a professional association in 1971, Kirkpatrick reported that the Commission was “moving into ‘high gear’ in the task of preserving and promoting competition in the American economy.”150 He said he and his fellow board members “fully intend to be in the vanguard of exploration of the new frontiers of antitrust law.”151

By mid-1974, the FTC had launched several significant cases involving monopolization and collective dominance, including pathbreaking shared monopolization cases against the breakfast cereal152 and petroleum refining industries.153 With these matters underway, Engman in 1974 appeared at a congressional hearing of the Joint Economic Committee and received criticism that the FTC had been insufficiently active in challenging monopolies.154 The Joint Committee’s chairman, Senator William Proxmire, told Engman “the FTC, like a number of other regulatory agencies seems to concern itself with minor infractions of the law, and to spend much of its time on cases of small consequence.”155 Perhaps astonished to hear that cases to break up the nation’s leading breakfast cereal manufacturers and petroleum refiners involved minor infractions or matters of small consequence, Engman replied, “The Federal Trade Commission today is very aggressive. . . . We have seen a total turnaround in terms of the types of matters which are being addressed by the Bureau of Competition.”156

Beyond general policy exhortations to exercise power boldly and to err on the side of intervention, of doing too much rather than too little, Congress in the early to mid-1970s instructed the Commission to focus attention on specific commercial sectors and competitive problems within them. In the face of severe fuel shortages and price spikes for petroleum products in the early 1970s, numerous legislators demanded that the FTC conduct investigations and challenge the conduct of large, integrated petroleum companies. 157 Many insisted that the FTC use its competition mandate to force integrated refiners to deal on equitable terms with independent refiners and distributors.158 The Commission’s decision to file the Exxon shared monopoly case, which sought extensive horizontal and vertical divestiture remedies, can be explained as a response to these demands.159 In the same period, Congress applied strong pressure upon the FTC to examine and correct what it believed to be serious structural obstacles to effective competition in the food manufacturing industry.160 Here, also, the agency’s decision to prosecute the shared monopolization case against the country’s leading producers of ready-to-eat breakfast cereals can be seen as a response to this concern and faithful to the congressional prescription that the FTC use novel, innovative approaches to cure competitive problems.161 In these and other matters, the Commission explored the frontiers of its powers in the development of new cases.162

When one aligns the guidance of Congress in the early to mid-1970s about the appropriate content of FTC policy making with the FTC’s activity in the decade, it is apparent that the critique of the agency as disobedient to legislative will is a fiction, or at least badly misleading. A more accurate positive depiction of events in the 1970s is that the Commission faithfully followed legislative instructions given from 1970 up through the mid-1970s about the appropriate philosophy and means of enforcement, and that, as the decade came to a close, Congress changed its mind about what the FTC should do and how it should do it. As described below in Section IV.D., 163 that change in legislative temperament and the response by Congress to industry backlash against the FTC’s program have important implications for how the FTC plans programs and selects projects in the future. Accurate positive analysis reveals that the agency was not disobedient to Congress but was inattentive to the operation of a political feedback loop that exposes Congress to industry pressure once the FTC implements programs that involve significant economic stakes and endanger powerful commercial interests.164

Nor does a careful study of the positive record of the 1970s show that the FTC policy making was “insane.” Measured by its contributions to institution-building, the Commission did many things that epitomize good public administration. It carried out important organizational and personnel reforms that upgraded its operations and personnel.165 As explained more fully below, the agency also improved its mechanisms for setting priorities and selecting projects to achieve them and strengthened investments in policy research and development (including a program to evaluate the effects of completed cases).166 The FTC successfully carried out new regulatory duties entrusted by Congress in the 1970s; most notable was the implementation of the premerger notification mechanism that Congress created in the Hart-Scott-Rodino Antitrust Improvements Act of 1976.167 In all of these areas, the Commission of the 1970s made enduring enhancements to the institution and set important foundations for successful programs that followed in the next forty years. An insane agency could not have done so.

Another focal point for attention in assessing the FTC’s performance in the 1970s was the quality of its substantive agenda. Was the FTC’s substantive program in the 1970s “insane”? Many Commission competition and consumer protection initiatives in the 1970s encountered grave problems. FTC efforts to execute the bold, innovative, risk-preferring program that Congress had called for earlier in the decade generated a number of serious project failures.168 Insanity, on the part of individual leaders or the institution as a whole, does not explain the failures. These outcomes have more prosaic causes whose understanding is important to the future formulation of competition policy. Chief among the FTC’sflaws were a lack of historical awareness about the political hazards associated with undertaking an agenda of bold, innovative cases against powerful commercial interests; inadequate appreciation for the demands of bringing large numbers of difficult cases and promulgating ambitious trade regulation rules would impose on the agency’s improving but uneven human capital; and underestimation of the change in the center of gravity of economic learning that supports the operation of the U.S. antitrust system. As described below, many of these failings are rooted in weaknesses in the FTC’s knowledge in the 1970s of the positive record of its past enforcement experience.169

B. The Inadequate and Misdirected Enforcement Activity Narrative

Like the hyperactivity narrative described above, the inadequate activity narrative relies heavily on enforcement data to support the view that the federal antitrust agencies have brought too few cases overall and, when filing cases, have focused resources on the wrong types of matters.

Implicit or explicit assumptions about the level of enforcement activity have provided a central foundation in the modern era for broad normative claims of poor system performance. One collection of inadequacy critiques attacks federal enforcement program of the Reagan administration – a period characterized by what one journalist described as an “almost total abandonment of antitrust policy.” 170 In 1987, in discussing Reagan-era federal antitrust enforcement, Professor Robert Pitofsky said the DOJ and the FTC had produced “the most lenient antitrust enforcement program in fifty years.” 171 Professor Milton Handler remarked that in the Reagan era “a policy of nonenforcement has set in, much to the distress of those who believe that without antitrust the free market cannot remain free.” 172 Professors Lawrence Sullivan and Wolfgang Fikentscher observed, in addressing the treatment of civil nonmerger matters, “enforcement ceased.”173

A second body of commentary assails the work of the federal agencies in the George W. Bush administration. For example, in 2008, during his campaign to gain the Democratic Party’s nomination for the presidency, Barack Obama said the George W. Bush administration “has what may be the weakest record of antitrust enforcement of any administration in the last half-century.” 174 The Obama statement did not compare activity levels across all administrations over the 50-year-long comparison period, but the statement suggested that the general claim was based on variations in activity over time.

A third version of the inadequacy narrative marks the beginning of the decline of effective enforcement at the outset of the George W. Bush administration and extending through the present.175

A fourth variant writes off the entire period from roughly 1980 onward as an antitrust catastrophe.176 After noting that for most of the 20th century “antitrust enforcement waxed or waned depending on the administration in office,” Professor Robert Reich recently wrote that “after 1980 it all but disappeared.”177 He added that Presidents Bill Clinton and Barack Obama “allowed antitrust enforcement to ossify, enabling large corporations to grow far larger and major industries to become more concentrated.” 178

Presented below are categories of arguments that rely upon specific assertions about the positive record of modern antitrust enforcement. These arguments make positive claims regarding either the amount of activity, the reasons for observed behavior, or both.

GENERAL CRITICISMS OF ANTITRUST ENFORCEMENT: BORK, REAGAN, AND THE DESTRUCTION OF U.S. COMPETITION POLICY

Many commentators have offered explanations for why federal antitrust enforcement became inadequate after the late 1970s. One major positive explanation is that the modern Chicago School of antitrust analysis, grounded largely in the writings of Robert Bork, inspired a severe retrenchment of enforcement at the DOJ and the FTC and led the federal courts to narrow antitrust doctrine since the late 1970s.179 A major focus of this discussion of the causes for changes in enforcement involves rules governing the treatment of dominant firms.180

A second cause offered to explain a redirection of enforcement is the ascent to the presidency of Ronald Reagan and his appointment of permissive leadership to the DOJ and the FTC.181 The Reagan administration is said to have inherited a generally well-functioning antitrust enforcement system and run it into the ground.

The Chicago School, Bork-centric, and Reagan-centric explanations for policy change can be misleading due to mischaracterizations of what took place and their tendency to omit other forces that had helped narrow the scope of antitrust enforcement. Bork and the Chicago School unmistakably have exerted a significant impact upon modern antitrust policy, but the retrenchment of antitrust enforcement in some areas cannot accurately be attributed to them entirely or, for a number of important developments, even principally. 182 Many proponents of the inadequacy narrative make little or no mention of the role of modern Harvard School scholars, such as Philip Areeda and Donald Turner, in leading courts and enforcement agencies to move the antitrust system toward a less interventionist stance.183

Areeda and Turner encouraged courts to forego reliance on noneconomic goals in deciding antitrust cases. 184 The two Harvard scholars also advocated the adoption of stricter procedural and doctrinal screens to counteract what they perceived to be flaws in the U.S. system of private rights of action.185 The inadequacy narrative often overlooks the influence of the modern Harvard School and thus misses how much the permissiveness of modern antitrust policy reflects the Harvard School’s concern that private rights of action over-deter legitimate business conduct by dominant firms.186 This yields a faulty positive diagnosis of the forces that have reduced the reach of the U.S. antitrust regime. As noted below, understanding how the institution-grounded limitations proposed by the modern Harvard School have imposed greater demands on plaintiffs has important implications for government plaintiffs seeking to devise a strategy to reclaim doctrinal ground lost since the 1970s.187

Similar imprecision and omission characterize the portrayal of the Reagan administration as the force that swung antitrust policy away from a sensible interventionist equilibrium and gave it a durably noninterventionist orientation. Some elements of the Reagan-centric narrative turn events 180 degrees around from their positive roots.188 More significant, the narrative does not address how badly the Congress and the White House had damaged the FTC’s stature and operations before Ronald Reagan took office in late January 1981. By the end of 1980, the Commission had been shoved into the equivalent of political bankruptcy by a Congress and a White House under the control of the Democratic Party.189

By treating the 1980 presidential election as the cause of an abrupt change in federal antitrust enforcement policy, the Reagan-centric inadequacy narrative fails to grasp the significance of the political assault, led by Democrats, against the FTC in the late 1970s. Recognition of how the FTC’s relationship with Congress changed over the course of the 1970s forces one to confront the question of why an agency that enjoyed powerful congressional support through much of the decade came to grief so quickly. The episode has a sobering cautionary lesson for contemporary policy making: it demonstrates how quickly congressional attitudes can change once powerful business interests affected by FTC actions bring their resources to bear upon Congress, and how turnover in the legislature can erode vital political support. An accurate positive account of the 1970s suggests that an agency should strive to complete its cases and rulemaking initiatives as expeditiously as possible, lest long lags between the start and conclusion of matters expose the agency to debilitating political backlash. This policy making prescription becomes apparent only by forming an accurate picture of what happened to the FTC in the 1970s.

#### Key to break the political power of Big Ag broadly – spills over to deconsolidate farming

Gustin 19 (Georgina Gustin, covers agriculture for Inside Climate News, won numerous awards, including the John B. Oakes Award for Distinguished Environmental Journalism and the Glenn Cunningham Agricultural Journalist of the Year, formerly reported for the St. Louis Post-Dispatch and CQ Roll Call, graduate of the Columbia University Graduate School of Journalism, “Industrial Agriculture, an Extraction Industry Like Fossil Fuels, a Growing Driver of Climate Change,” Inside Climate News, 1-25-2019, https://insideclimatenews.org/news/25012019/climate-change-agriculture-farming-consolidation-corn-soybeans-meat-crop-subsidies/)

Meat and Mergers

Critics say that lax enforcement of antitrust laws has enabled even more concentration in the hands of fewer companies.

That concentration has occurred not just at the farm level but throughout the food system, including in fertilizer and pesticide manufacturing, grain distribution, food processing and grocery retailing. Four companies or fewer control each of these sectors of the food industry.

Recent mega-mergers of agricultural chemical and seed companies—Monsanto and Bayer, ChinaChem and Syngenta, Dow Chemical and DuPont—have further concentrated seed technology in the hands of a few companies. Critics worry that could leave farmers with fewer choices over what to plant and how.

Nowhere has the consolidation been more pronounced than in the meat industry, a hugely profitable and influential force in American agriculture. Today, a handful of companies, led by Brazil-based JBS Holdings, dominate the global meat industry, wielding enormous economic and political might.

“It’s JBS and Smithfield,” said Joe Maxwell, a hog farmer from Missouri and executive director of the antitrust watchdog Organization for Competitive Markets. “They want the U.S. to be the cheapest place to raise meat. They drive the political power in D.C. The result is that farmers are locked into farming for government programs that are not sustainable, economically and environmentally.”

The consolidation in meat production is also what’s driving the consolidation of crop farming, Maxwell said.

Livestock is now commonly raised or fattened in confinement on a diet of soybeans and corn instead of grass or other forage.

“The decades-long removal of livestock from diversified farms and moving into industrial facilities has certainly increased corn and soybean acreage. Those two things go hand in hand,” Hoefner said. “I think it’s a very open question whether that kind of transition back to a more integrated crop and livestock system is even possible. We’ve made such major landscape changes.”

#### Key to regenerative farming

Tam 21—(writer at UCLA Undergraduate Law Journal, won the UCLA Prize for Undergraduate Research, supervised by William Boyd, Professor of Law at UCLA School of Law and Institute of the Environment and Sustainability). Kristen Tam & Olivia Bielskis. April 1, 2021. “Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement”. UCLA Library. <https://escholarship.org/uc/item/0m16g2r5#main>.

INTRODUCTION

The failures of the federal courts and agencies to adequately enact antitrust enforcement has resulted in extensive consolidation of the agricultural marketplace creating conditions in which few distributors, meatpacking firms, and farms hold disproportionate percentages of the market power. Such instances of consolidation in the market are intended to be regulated through federal policies such as the Clayton Antitrust Act. However, the influence of Robert Bork and the Chicago School, which both argue to prioritize efficiency through consolidation over small businesses and competition in the market, resulted in an era from the 1980s to the present where the federal courts and agencies have adopted a less precautionary philosophy in interpreting antitrust laws, allowing large firms to merge, and leaving the marketplace largely unregulated.

The first gatekeepers that regulate corporation consolidation are the Department of Justice’s (DOJ) Antitrust Division and the Federal Trade Commission (FTC), which are responsible for reviewing new and existing mergers. To supplement, the Courts evaluate cases that involve mergers that seek to persist despite the DOJ or FTC preventing the merge. The Courts can also hear cases in which other firms on the market claim they will be substantially threatened by a potential merger. Often, mergers are brought up to the Courts under the Clayton Act, which requires proof of antitrust injury to sue. Suffering “antitrust injury” can include acts that “may substantially lessen competition,” as stated in Section 7 of the Act.

The impacts of large mergers are especially staggering when examining the dominance of the agriculture industry’s distributors, largest meat packing firms, and largest farms, which can all be referred to as agriculture firms in this paper. In 2017, four beef packaging firms owned 83 percent of the market.1 With only four firms holding a substantial percentage of market power, smaller firms and farms were obligated to decrease their selling price in order to compete with larger firms maintaining high economies of scale. This hinders the profitability of small farms, ultimately resulting in market failure because these farms are eventually driven out by their untouchable competitors, allowing the largest agriculture firms to hold monopolistic power. In the 1980s, farmers profited 37 cents per dollar spent in production,2 while in 2018, farmers made less than 15 cents per dollar.3 Decreasing profit margins are being perpetuated by the few gargantuan distributors that control the marketplace, allowing them to pay farmers or ranchers the price they want to set, often below market rate.

Decreasing competition and profit margins threatens the existence of small farmers and poses a substantial threat to essential climate change mitigation by hindering the growth of regenerative farming. Large industrial agriculture firms mostly utilize destructive farming practices including applying toxic synthetic fertilizers, planting monoculture fields, and tilling their soil. Tilling, the practice of overturning soil for the purpose of reducing soil compaction4 and mixing nutrients, decreases water retention, destroys vital soil microbes, and results in the release of carbon dioxide, a harmful greenhouse gas contributing to climate change.5 Every year, 44.02 billion tons of chemical fertilizer are applied onto U.S. soil,6 while every minute thirty soccer fields worth of soil are lost due to tilling practices.7 This is threatening food security, ecosystems, and the climate.8 The Intergovernmental Panel on Climate Change (IPCC) prescribes that the world needs to limit global temperature rise to 1.5 degrees Celsius by 2050. Agriculture contributes to 10.5 percent of the United States’ emissions, therefore we have a significant capacity to instead decrease emissions by implementing more sustainable farming practices.9

Conversely, a majority of smaller farms avoid these harmful practices and work to combat climate change by implementing regenerative techniques such as practicing no till, applying compost as fertilizer, and planting cover crops. In addition to building soil health, increasing soil water retention, and sequestering carbon dioxide from the atmosphere, small farms are able to implement farming practices that fit the local environment and adapt quickly with flexibility to maintain production during changing environmental conditions.10 Although small farms are more likely and willing to implement regenerative practices, their ability to switch to regenerative practices is dampened because they have limited money, time, or resources to do so with low profit margins. Failure to regulate the market is hindering a transition that would benefit the industry and planet in the long run. Although there are no laws in place that limit soil degrading practices, antitrust laws were created to prevent monopolies and undue concentration of market power in the hands of a few corporations, such as the beef packing conglomerates, from forming on the marketplace. If implemented properly, these laws have the potential to protect competition in the agriculture industry, keep small farms alive, and decrease the amount of soil being destructively farmed.

The federal government’s lackluster antitrust enforcement is born from a history of jurisprudential doctrines that favor large corporations and efficiency and subsequently discourage federal agencies from striking down harmful mergers. This paper first discusses the impact of lackluster enforcement of antitrust laws on the agriculture industry, focusing specifically on the hindrance of regenerative farming practices. Antitrust laws were created to prevent and correct such consolidation, thus, I enlist a two-pronged approach that identifies the main avenues through which consolidation has increased, and recommend remedies. The first prong addresses how the merge permitted between two meat packing corporations in Cargill v. Monfort contradicts the purpose of the Clayton Act and has set substantial precedent for the court's non precautionary interpretation of antitrust laws and what constitutes as “antitrust harm” under the Clayton Act. I argue that the Courts should set a new judicial standard that allows the “threat of loss of profits due to possible price competition” to constitute “antitrust injury,” and that they must default to precautionary measures and strike down mergers that have the capacity to acquire an undue percentage of the market share. The second prong addresses how the negligence of the DOJ and FTC has yielded a significant increase in consolidation of agriculture firms in the United States. To do so, I argue that these agencies must increase the number of agriculture and meatpacking merger acquisitions they block by holistically analyzing the scope of the mergers market power. Additionally, the reinvestigation of current corporations in the market holding unruly market power is essential in remedying the adverse impacts of market consolidation in agriculture.

I. The Current Market: As Farms Consolidate, the Growth of Regenerative Farming is Hindered

A. Increased Consolidation in the Agriculture Industry as Deregulation Heightens on Farms, Meat Packing, and Other Food Corporations

As defined by the United States Department of Agriculture (USDA), a “farm” is any place from which $1,000 or more of agricultural products were produced or sold during the year.11 This section discusses the historical and current consolidation trends in the agriculture marketplace for farms, meatpacking firms, and many other food corporations. I find that the overall number of farms has decreased while the size of each farm or firm has increased, and the number of farms in higher sales classes have increased along with their subsequent share of farmland.12

Farm numbers have decreased since the onset of the 20th century, however, due to Robert Bork and the Chicago School’s influence that prioritized economic efficiency and consumer prices over small businesses,13 the number of farms in the United States started decreasing at faster rates. In 1975, there were 2.5 million farms across the country,14 which declined by an average of 2.41 percent per year.1516 Comparatively, from 1980 to 1985, the number of farms decreased by an average of 6.15 percent per year,17 alluding to increased rates of consolidation.

While farm numbers continue to decrease, output production size and the Gross Cash Farm Income (GCFI) of large farms has increased. From 2012 to 2018, the number of farms decreased from 2.11 to 2.03 million farms, while the average farm size increased from 429 to 443 acres.18 Specifically, the growth in land holdings has increased the greatest in the largest farms. In 1987, 57 percent of the United States cropland was operated by midsize farms with 100 to 999 acres of cropland while only 15 percent was operated by large farms over 2,000 acres.19 In 2012, cropland operated by midsize farms drastically decreased to 36 percent while cropland operated by large farms increased to 36 percent, more than doubling the figure from 1987.20 In addition to holding control of more land and market power, and decreasing competition in the marketplace, these larger farms hold a disproportionate majority of agricultural commodity profits. In 1991, small farms, defined as farms whose income is less than $350,000, took in 46 percent of agricultural profit, while in 2015, small farms took in only 25 percent of agricultural profit.21 Large farms, who make more than $1,000,000 held 31 percent of the GFCI in 1991, while in 2015, their share increased to 51 percent.22

The trend towards consolidation is also prevalent in the livestock, poultry and meat packing industries, seeing as the number of farms and packaging plants decrease while the number of animals raised per farm increases. From 1987 to 2017, there was a 28.50 percent decrease in the number of cow, pig and chicken farms.23 While the number of farms decreased, the midpoint numbers for the number of livestock per farm increased; where half of the livestock are above, and half are below it. In 1987, the midpoint number of cows for each livestock feeding industry was 80, while in 2012, this increased to 900, an increase of 1,025 percent.24 The number of meatpacking plants, where farmers sell their animals to be slaughtered, packaged, and distributed, also decreased which allows meatpackers to run roughshod over farmers by giving them power to pay their desired lower prices, disadvantaging farmers.

Consolidation in other food industries is increasing as well, seeing as in 2012 four firms owned 89 percent of the peanut butter industry, a staggering figure which increased to 92 percent in 2017.25 In 2015 the two largest corn seed firms owned 78 percent of the market share,26 in 2017 the four largest jelly firms owned 85 percent of the industry,27 and in 2018, two firms owned 87 percent of the mayonnaise market share, a $1.6 billion dollar industry.28 These figures showing monopolization exemplify the formidable proportions to which the agriculture and food industry is consolidated. These trends underscore how the regulation mechanisms in place to promote competition and prevent monopolization are not working.

B. Consolidation Threatens Democratic Systems

The consolidation and existence of merged corporations harms farmers and consumers and contradicts the democratic spirit of objective policy creation for the good of the people, not the corporation. Limited choices in the marketplace increases reliance on those select businesses, allowing them to have a significant influence on the government to make decisions in their favor. If any of those firms becomes economically endangered, the government is more inclined to to bail them out because they rely on their product or service. For instance, Tyson is one of America’s largest meat processing companies.29 Because they control a sizable majority of the market, when problems hindering production arise, including when multiple plants shut down during the onset of the coronavirus pandemic in 2020, a large decrease in the nation’s slaughtering capacity comes about, resulting in food shortages. Because of their essential position in the food supply, these meatpacking businesses can use their large market power to put pressure on the government to provide subsidies and bail them out of lawsuits and business failures. This dynamic harms farmers who have few or no other choices to sell their livestock to for slaughter in order to go to the market. These firms can extract these advantages even when problems such as COVID-19 outbreaks in the plants resulted from deliberate neglect to implement adequate safeguards by company heads.30 In addition to providing an unwavering safety net regardless of firm malpractice, the government often bends to the firm’s demands if they seek subsidies or exemptions from prosecution.31 In effect, when firms become so large that they cannot be allowed to fail, they begin to have disproportionate power over the political process.32

C. Consolidation Threatens the Growth of Regenerative Farming

I. Regenerative Farming is Reducing Emissions, Bolstering Biodiversity, and Increasing Food Security, a Critical Practice to create a Climate Resilient Future

The United Nations IPCC report calls for a rapid greenhouse gas reduction to limit temperature rise to 1.5 degrees celsius by 2050.33 Given that agriculture and forestry accounted for 10.5 percent of greenhouse gas emissions in 2018,34 farming practices can play a crucial role in meeting these goals. Farming the land in ways that build healthy soil, maintain biodiversity, and sequester carbon dioxide are critical measures that will help America cultivate a sustainable food system, protect the land for generations to come, and meet greenhouse gas emission reduction goals.

Currently, the practices that dominate the American agricultural landscape often till the soil, plant only one to two crops at a time, and input large sums of fertilizer, herbicides, pesticides, and other chemicals to streamline production. Industrialized agriculture values efficiency, maximizing yield, and decreasing labor input. In contrast, regenerative agriculture practices maintain soil health for long term benefit by applying compost as fertilizer, planting cover crops, implementing diverse crop rotation, rotating livestock grazing, limiting fertilizer and pesticide use, and eliminating tillage practices.35 Although opponents highlight that regenerative practices yield less products per acre and require more labor input, they neglect the significance of their energy input being 30-60 percent less than traditional methods because they do not use machines, fertilizer, and herbicides.36 This practice ultimately increases the long term productivity and stability of food production because it doesn’t rely on the continuous purchasing and application of chemicals into the soil. Instead, it builds soil health by increasing nutrient and water retention, both of which increases land productivity.37

II. Small Farms are More Likely to Implement Regenerative Fertilization Practices

One of the defining regenerative agriculture practices is applying compost and manure as fertilizer. There are three different types of fertilization methods that the USDA measures every few years, manure, organic, and commercial that help replenish soil nutrients. Manure is the application of animal bio excretions,38 organic fertilizer is the use of organic matter, compost, animal manures or green manures and does not include any chemical fertilizers,39 and commercial fertilizer is the application of chemically derived fertilizers such as nitrogen, phosphate and potash.40 For these figures, manure and organic fertilizers are categorized as “regenerative fertilizers” because they represent methods that replenish soils with naturally derived as opposed to chemically manufactured nutrients.

Small farms, 10.0 to 49.9 acres, are more likely to implement regenerative fertilizer methods than medium sized, 260 to 499 acres, and large sized, 1,000 to 1,999 acre farms. In 2017, 32.74 percent of small farms used regenerative fertilizer, compared to 27.27 percent of medium and 21.63 percent of large farms.41 Small farms are also transitioning away from commercial fertilizer to regenerative fertilizer methods at a faster rate than medium and large farms. From 2012 to 2017, small farms had the greatest percent decrease in number of farms using commercial fertilizers, 6.50 percent, and the largest percent increase for regenerative practices, 6.47 percent. Medium farms experienced a 2.28 percent decrease in the number of farms implementing commercial fertilizers, while a 2.57 percent increase in regenerative fertilizers. Large farms experienced a 2.31 percent decrease in the number of farming implementing commercial fertilizers, while a 2.32 percent increase in regenerative fertilizers.42 This demonstrates that smaller farms are more willing and better suited to implement regenerative practices.

#### Extinction

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We hear a lot about how we’re running out of antibiotics. But we are also doomed to run out of pesticides, because insects inevitably develop resistance, whether toxic chemicals are sprayed directly or genetically engineered into the plants.

Worse yet, weeds, insects, and fungus develop resistance in just 5 years on average, which has caused the chemicals to grow increasingly lethal over the past 60 years. And it takes on average eight to ten years to identify, test, and develop a new pesticide, though that isn’t long enough to discover the long-term toxicity to humans and other organisms.

And this devil’s bargain hasn’t even provided most of the gains in crop yields, which is due to natural-gas and phosphate fertilizers plus soil-crushing tractors and harvesters that can do the work of millions of men and horses quickly on farms that grow only one crop on thousands of acres.

Yet before pesticides, farmers lost a third of their crops to pests, after pesticides, farmers still lose a third of their crops.

Even without pesticides, industrial agriculture is doomed to fail from extremely high rates of soil erosion and soil compaction at rates that far exceed losses in the past, since soil couldn’t wash or blow away as easily on small farms that grew many crops.

But pest killing chemicals are surely accelerating the day of reckoning sooner rather than later. Enormous amounts of toxic chemicals are dumped on land every year — over 1 billion pounds are used in the United State (US) every year and 5.6 billion pounds globally (Alavanja 2009).

This destroys the very ecosystems that used to help plants fight off pests, and is a major factor biodiversity loss and extinction.

Evidence also points to pesticides playing a key role in the loss of bees and their pollination services. Although paleo-diet fanatics won’t mind eating mostly meat when fruit, vegetable, and nut crops are gone, they will not be so happy about having to eat more carbohydrates. Wheat and other grains will still be around, since they are wind-pollinated.

Agricultural chemicals render land lifeless and toxic to beneficial creatures, also killing the food chain above — fish, amphibians, birds, and humans (from cancer, chronic disease, and suicide).

Surely a day is coming when pesticides stop working, resulting in massive famines. But who is there to speak for the grandchildren? And those that do speak for them are mowed down by the logic of libertarian capitalism, which only cares about profits today. Given that a political party is now in power in the U.S. that wants to get rid of the protections the Environmental Protection Agency (EPA) and other agencies provide, may make matters worse if agricultural chemicals are allowed to be more toxic, long-lasting, and released earlier, before being fully tested for health effects.

Meanwhile chemical and genetic engineering companies are making a fortune, because the farmers have to pay full price, since the pests develop resistance long before a product is old enough to be made generically. Except for glyphosate, but weeds have developed resistance. Predictably.

In fact, the inevitability of resistance has been known for nearly seven decades. In 1951, as the world began using synthetic chemicals, Dr. Reginald Painter at Kansas State University published “Insect Resistance in Crop Plants”. He made a case that it would be better to understand how a crop plant fought off insects, since it was inevitable that insects would develop genetic or behavioral resistance. At best, chemicals might be used as an emergency control measure.

Farmers will say that we simply must carry on like this, there’s no other choice. But that’s simply not true.

Consider the corn rootworm, that costs farmers about $2 billion a year in lost crops despite spending hundreds of millions on chemicals and the hundreds of millions of dollars chemical companies spend developing new chemicals.

To lower the chances of corn pests developing resistance, corn crops were rotated with soybeans. Predictably, a few mutated to eat soybeans plus changed their behavior. They used to only lay eggs on nearby corn plants, now they disperse to lay eggs on soybean crops as well. Worse yet, corn is more profitable than soy and many farmers began growing continuous corn. Already the corn rootworm is developing resistance to the latest and greatest chemicals.

But the corn rootworm is not causing devastation in Europe, because farms are smaller and most farmers rotate not just soy, but wheat, alfalfa, sorghum and oats with corn (Nordhaus 2017).

Before planting, farmers try to get rid of pests that survived the winter and apply fumigants to kill fungi and nematodes, and pre-emergent chemicals to reduce weed seeds from emerging. Even farmers practicing no-till farming douse the land with herbicides by using GMO herbicide-resistant crops. Then over the course of crop growth, farmers may apply several rounds of additional pesticides to control different pests. For example, cotton growers apply chemicals from 12 to 30 times before harvest.

Currently, the potential harm is only assessed for 2 to 3 years before a permit is issued, even though the damage might occur up to 20 years later.

Although these chemicals appear to be just like antibiotics, that isn’t entirely true. We develop some immunity to a disease after antibiotics help us recover, but a plant is still vulnerable to the pests and weeds with the genetics or behavior to survive and chemical assault.

Although there are thousands of chemical toxins, what matters is how they kill, their method of action (MOA). For herbicides there are only 29 MOAs, for insecticides, just 28. So if a pest develops resistance to one chemical within an MOA, it will be resistant to all of the thousands of chemicals within that MOA.

The demand for chemicals has also grown due the high level of bioinvasive species. It takes a while to find native pests and make sure they won’t do more harm than good. In the 1950s there were just three main corn pests. By 1978 there were 40, and they vary regionally. For example, California has 30 arthropods and over 14 fungal diseases to cope with.

When I was learning how to grow food organically back in the 90s, I remember how outraged organic farmers were that Monsanto was going to genetically engineer plants to have the Bt bacteria in them. This is because the only insecticide organic farmers can use is Bt bacteria, because it is found in the soil. It’s natural. Organic farmers have been careful to spray only in emergencies so that insects didn’t develop resistance to their only remedy. Since 1996, GMO plants have been engineered to have Bt in them, and predictably, insects have developed resistance. For example, in 2015, 81% of all corn was planted with genetically engineered Bt. But corn earworms have developed resistance, especially in North Carolina and Georgia, setting the stage for damage across the nation. Five other insects have developed resistance to Bt as well.

GMO plants were also going to reduce pesticide use. They did for a while, but not for long. Chemical use has increased 7% to 202,000 tons a year in the past 10 years.

Resistance can come in other ways than mutations. Behavior can change. Cockroach bait is laced with glucose, so cockroaches that developed glucose-aversion now no longer take the bait.

It is worth repeating that chemicals and other practices are ruining the long-term viability of agriculture. Here is how author Dyer explains it:

“Ultimately the practice of modern farming is not sustainable” because “the damage to the soil and natural ecosystems is so great that farming becomes dependent not on the land but on the artificial inputs into the process, such as fertilizers and pesticides. In many ways, our battle against the diverse array of pest species is a battle against the health of the system itself. As we kill pest species, we also kill related species that may be beneficial. We kill predators that could assist our efforts. We reduce the ecosystem’s ability to recover due to reduced diversity, and we interfere with the organisms that affect the biogeochemical processes that maintain the soils in which the plants grow.

Soil is a complex, multifaceted living thing that is far more than the sum of the sand, silt, clay, fungi, microbes, nematodes, and other invertebrates. All biotic components interact as an ecosystem within the soil and at the surface, and in relation to the larger components such as herbivores that move across the land. Organisms grow and dig through the soil, aerate it, reorganize it, and add and subtract organic material. Mature soil is structured and layered and, very importantly, it remains in place. Plowing of the soil turns everything upside down. What was hidden from light is exposed. What was kept at a constant temperature is now varying with the day and night and seasons. What cannot tolerate drying conditions at the surface is likely killed. And very sensitive and delicate structures within the soil are disrupted and destroyed.

Conventional tillage disrupts the entire soil ecosystem. Tractors and farm equipment are large and heavy; they compact the soil, which removes air space and water-holding capacity. Wind and water erosion remove the smallest soil particles, which typically hold most of the micronutrients needed by plants. Synthetic fertilizers are added to supplement the loss of oil nutrients but often are relatively toxic to many soil organisms. And chemicals such as pre-emergents, fumigants, herbicides, insecticides, acaricides, fungicides, and defoliants eventually kill all but the most tolerant or resistant soil organisms. It does not take long to reduce a native, living, dynamic soil to a relatively lifeless collection of inorganic particles with little of the natural structure and function of undisturbed soil”.

When I told my husband all the reasons we use agricultural chemicals and the harm done, my husband got angry and said “Farmers aren’t stupid, that can’t be right!”

I think there are a number of reasons why farmers don’t go back to sustainable organic farming.

First, there is far too much money to be made in the chemical herbicide, pesticide, and insecticide industry to stop this juggernaut. After reading Lessig’s book “Republic, Lost”, one of the best, if not the best book on campaign finance reform, I despair of campaign financing ever happening. So chemical lobbyists will continue to donate enough money to politicians to maintain the status quo. Plus the chemical industry has infiltrated regulatory agencies via the revolving door for decades and is now in a position to assassinate the EPA, with newly appointed Scott Pruitt, who would like to get rid of the EPA.

Second, about half of farmers are hired guns. They don’t own the land and care about passing it on in good health to their children. They rent the land, and their goal, and the owner’s goal is for them to make as much profit as possible.

Third, renters and farmers both would lose money, maybe go out of business in the years it would take to convert an industrial monoculture farm to multiple crops rotated, or an organic farm.

Fourth, it takes time to learn to farm organically properly. So even if the farmer survives financially, mistakes will be made. Hopefully made up for by the higher price of organic food, but as wealth grows increasingly more unevenly distributed, and the risk of another economic crash grows (not to mention lack of reforms, being in more debt now than 2008, etc).

Fifth, industrial farming is what is taught at most universities. There are only a handful of universities that offer programs in organic agriculture.

Sixth, subsidies favor large farmers, who are also the only farmers who have the money to profit from economies of scale, and buy their own giant tractors to farm a thousand acres of monoculture crops. Industrial farming has driven 5 million farmers off the land who couldn’t compete with the profits made by larger farms in the area.

But farmers will have to go organic whether they like it or not

It’s hard to say whether this will happen because we’ve run out of pesticides, whether from resistance or a financial crash reducing new chemical research, or whether peak oil, peak coal, and peak natural gas will cause the decline of chemical farming. Agriculture uses about 15 to 20% of fossil fuel energy, from natural gas fertilizer, oil-based chemicals, farm vehicle and equipment fuel, the agricultural cold chain, distribution, packaging, refrigeration, and cooking to name a few of the uses.

At some point of fossil decline, there won’t be enough fuel or pesticides to continue business as usual.

Farmers will be forced to go organic at some point. Wouldn’t it be easier to start the transition now?

### 1NC

CFPB CP

#### [plank 1] The United States Federal Government should reduce the scope of its antitrust laws by rescinding unified Banking Merger Guidelines and establishing an independent role for the Consumer Financial Protection Bureau in bank merger approvals.

#### [plank 2] The Consumer Financial Protection Bureau should establish Banking Merger Guidelines that consider larger geographical markets, minimum efficient scale, and non-traditional competition in bank merger approvals, as per our Foohey evidence.

#### CFPB solves – antitrust NOT key

Foohey 21 (Pamela, Professor of Law at Benjamin N. Cardozo School of Law – Yeshiva University, “How the CFPB Can Enhance Competition in Consumer Finance Right Now,” Sep 11, 2021, <https://blog.harvardlawreview.org/how-the-cfpb-can-enhance-competition-in-consumer-finance-right-now/)//NRG>

Beyond consolidation, there are also numerous examples of banks engaging in anti-competitive practices to protect their advantage. In 2019, the European Union fined major global banks including Citigroup and JPMorgan Chase for manipulating foreign currency markets and also penalized Bank of America for illegal practices restricting competition in government bond markets. These three financial institutions were consequently banned from participating in a large European Union recovery program this year.

In an economy that increasingly values – and monetizes – data, large banks have also sought to undermine the ability of third parties to access consumer data, even when a consumer has expressly authorized a third party to do so. Large banks have even bankrolled new trade associations to set industry standards and technical guidelines that protect their turf.

All of these examples point to a need for stronger antitrust scrutiny and more competition in the consumer financial services industry. As encouraged by President Biden in his executive order, there are a few leading ways that the CFPB can use its authority to crack down on unfair, deceptive, or abusive practices (UDAAP) in consumer financial products and services. In March, the CFPB issued a statement that it “intends to exercise its supervisory and enforcement authority consistent with the full scope of its statutory authority.” In the past, the CFPB has been called on to use its UDAAP authority to police practices related to student loans and home mortgage modifications. The four ideas detailed below likewise fall within the full scope of the CFPB’s statutory authority.

First, the CFPB should investigate hidden and deceptive bank fees. For example, banks should be prohibited from marketing “free” checking accounts to consumers if those accounts enable overdrafts – and the high fees that accompany them. Like airline companies that market fares without including fees for checked baggage, seat selection, or other add-ons, banks that employ this tactic are misleading consumers to gain an edge over their competitors. These practices fundamentally hurt competition, penalizing banks that offer more transparent pricing and creating a race to the bottom that puts consumers last.

Second, and similarly, the CFPB should require banks to make fees associated with sending or transmitting money more transparent. Although the agency, following its creation, put into place rules governing remittance transparency, a lack of active enforcement has too often rendered these guidelines symbolic. Banks typically charge costly fees for services such as wire transfers and foreign transactions, but do not always disclose those fees in advance. That’s because these fees represent an enormous source of revenue for these institutions. For example, nearly ten percent of the Spanish bank Santander’s 2016 global profits came from fees the bank charged on remittances, and those fees were six times greater than the fees offered by a prevalent non-bank competitor. This is in line with a World Bank analysis which found that traditional banks charge substantially more for remittances than other vendors. These practices deceive consumers and harm competition, making them ripe for more rigorous CFPB oversight.

Third, the CFPB should investigate abusive practices used by bank account screening consumer reporting agencies (CRAs), such as ChexSystems. Like financial institutions conducting credit checks on consumers before issuing them a credit card, banks also may consult reports from a bank account screening CRA to determine whether to approve a consumer’s application to open a new account. However, unlike credit reporting companies, bank account screening CRAs mostly supply banks with information on negative events, such as overdrafts or non-sufficient funds transactions. This makes it almost impossible for consumers with a ChexSystems report to open a new checking or savings account, and an investigation by the San Francisco Office of Financial Empowerment found that these reports also help to explain the persistently high unbanked rates in communities of color, including among people who were previously banked.

Finally, the CFPB should heed the guidance in President Biden’s executive order to issue a formal rulemaking under Section 1033 of the Dodd-Frank Act to establish a strong consumer data access right and make it easier for consumers to switch financial institutions. In the meantime, it should vigorously enforce Section 1033 to stop banks from blocking consumers’ ability to access and share financial data with competing firms. Large banks have already been working to entrench their advantage, giving preferential treatment to in-house products and undermining services that rely on access to consumer financial data to operate. Without clear guidance from the CFPB, these trends will worsen, resulting in more friction – and fewer choices – for consumers.

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### 1NC

**The United States federal government should establish and enforce interpretive rules and policy statements that create Banking Merger Guidelines that consider larger geographical markets, minimum efficient scale, and non-traditional competition under Section 5 of the Federal Trade Commission Act.**

**The United States federal government should rescind all Banking Merger Guidelines that conflict with the aforementioned standard.**

#### Interpretive rules and policy statements avoid rollback AND solve the case.

Pierce 21 (Richard J. Pierce, Jr., Lyle T. Alverson Professor of Law, George Washington University School of Law; “Can the Federal Trade Commission Use Rulemaking to Change Antitrust Law?;” 2021, GW Law School Public Law and Legal Theory Paper No. 2021-42, <https://ssrn.com/abstract=3933921>, TM) [language modified, denoted by brackets]

The FTC does not need to use the notice and comment process to accomplish that worthy goal, however. It can issue an interpretive rule in which it announces and explains why it interprets section five of the FTC Act to ban the inclusion of non-compete clauses in contracts to employ low paid employees. It can couple that interpretive rule with a general statement of policy in which it announces its intention to take aggressive action against any employer who acts in a manner that is inconsistent with its interpretation of the Act. It can follow those two actions with a couple of well-chosen, [high profile] ~~visibility~~ enforcement actions against firms that act in ways that are inconsistent with its interpretation of the Act.

That approach to the problem would be as effective as issuance of a legislative rule, and it would have major advantages over issuance of a legislative rule. There is no doubt that the FTC has the power to issue interpretive rules and policy statements to implement section five of the FTC Act. It has issued scores of interpretive rules and policy statements for many decades. The FTC can issue interpretive rules and policy statements in days, in contrast to the years required to complete a notice and comment rulemaking. There is also no doubt about the FTC’s authority to use adjudication to implement section five. It has exercised that power for over a century. The enforcement actions would be easy to win, given the powerful empirical evidence that non-compete clauses cause significant harm to the performance of both labor markets and product markets and that non-compete clauses in the contracts of low paid employees have no plausible offsetting benefits. In a matter of months, the FTC could use the combination of an interpretive rule, a policy statement, and a couple of high visibility enforcement actions to ban non-compete clauses in the contracts of low paid workers.

By contrast, the notice and comment proceeding required to issue a legislative rule would take years to complete. Once the FTC issued such a rule, it would be subjected to judicial review to determine whether the FTC has the power to issue legislative rules to implement section five of the FTC Act. Since the FTC has never previously attempted to exercise that power, there is a good chance that the issue would go all of the way to the Supreme Court. That could delay the effect of the rule for many years. If the FTC lost in that test of its authority, it would have wasted many years of hard work and a great deal of its scarce enforcement resources engaging in an exercise in futility.

### 1NC

#### Momentum for Manchin BBB now but its close

Everett & WU 3/02 John Burgess Everett is the co-congressional bureau chief for POLITICO, Nicholas Wu is a congressional reporter at POLITICO. “Dems agonize over Manchin's wish list: Taxes, prescription drugs, climate cash.” 03/02/2022. <https://www.politico.com/news/2022/03/02/joe-manchin-democrat-bill-taxes-00013246> {DK}

Joe Manchin is once again setting the agenda for **Dem**ocrat**s** and says he’s willing to make a deal. They’re **listening — cautiously**. Hours after President Joe Biden laid out what he hoped to salvage from Democrats’ defunct “Build Back Better” social spending plan, Joe Manchin quickly assembled a counteroffer. It might amount to deja vu for Democrats, many of whom still feel burned from last year’s debacle, yet many in the party are willing to entertain any shot they have to unify while they still have control of Congress. “Here’s the thing. I’ve always been open to talking to people okay? But they just don’t want to hear,” Manchin said in a Wednesday interview. The West Virginia centrist laid out a basic party-line package that could win his vote in the interview, to lower the deficit and enact some new programs — provided they are permanently funded. It may be Democrats’ best and last chance to get at least some of their major domestic priorities done before the midterm election, even as some leading liberals acknowledged any potential deal would not come close to the $1.7 trillion package Manchin spurned in December. Manchin said that if Democrats want to cut a deal on a party-line bill using the budget process to circumvent a Republican filibuster, they need to start with prescription drug savings and tax reform. He envisions whatever revenue they can wring out of that as split evenly between reducing the federal deficit and inflation, on the one hand, and enacting new climate and social programs, on the other — “to the point where it’s sustainable.” “If you do that, the revenue producing [measures] would be taxes and drugs. The spending is going to be climate,” Manchin said. “And the social issues, we basically have to deal with those” with any money that’s left, he added. As far as whether he thinks his party finally understands his parameters for joining the talks, he said that Democrats “know where I am. They just basically think that I’m going to change.” Negotiating with Manchin isn’t exactly Democrats’ favorite topic after nearly a year of back and forth. Asked about whether he can envision a passable deal, Sen. Mark Warner (D-Va.) responded: “I was hoping you would were going to, like, ask me to expound about Ukraine.” “I’ve got a lot of respect for him. And hope springs eternal,” Warner said. The two are often aligned in centrist deal-making groups. Manchin, who also chairs the Senate Energy Committee, said that the climate portion of any theoretical bill will look different now that Russia is invading Ukraine. He’s calling for the U.S. to ban oil imports from Russia and ramp up domestic energy production, including fossil fuels. He would support big clean energy investments in a potential deal, he said, but wants domestic oil, gas and coal production to still be a big part of the mix. “You want to be able to defend your people, have reliable, dependable and affordable power? You have to use ‘all of the above,’” Manchin said, defending his support for clean energy investments. “They say ‘Manchin doesn’t care … he’s killing the environment.’ I’m not killing anything.” Though he prefers everything in Congress to be bipartisan, Manchin said he has “come to that conclusion” that changing the tax code to make the rich and corporations pay their fair share can only be done with Democratic votes. To enact Manchin’s vision, Democrats would also have to bargain with Sen. Kyrsten Sinema (D-Ariz.) who last year steered the party toward surtaxes and corporate minimum taxes — and away from raising individual and corporate tax rates. Sinema said Wednesday that the tax package negotiated last year, which shied away from raising those rates, would more than pay for what Manchin is talking about. “Any new, narrow proposal — including deficit reduction — already has enough tax reform options to pay for it. These reforms are supported by the White House, target tax avoidance, and ensure corporations pay taxes, while not increasing costs on small businesses or everyday Americans already hurting from inflation,” said Hannah Hurley, a spokesperson for Sinema. Progressives might take a while to warm to it. Asked about Manchin’s hopes of diverting new revenues to deficit reduction and inflation, Sen. Bernie Sanders (I-Vt.) griped: “I don’t care what he wants. We’re talking about what the American people want. He doesn’t like it, he can vote against it, that’s his business.” And Rep. Barbara Lee (D-Calif.) scoffed, saying it would not satisfy many of the House’s frustrated liberals. She seemed more interested in still trying to change Manchin’s mind on the expanded child tax credit and other domestic programs than in accepting his blueprint. “I would hope he would reconsider, and realize how many people are being left behind,” Lee said. “We’ve got to keep going and try to get everything that we can get.” Despite some lawmakers’ aggravation with Manchin, other **progressives** were willing to entertain just about whatever they could get through with only 50 Senate Democrats and a slim House majority. After all, the midterms are now eight months away; recreating the momentum to put a big bill on the floor may take months. Sen. Elizabeth Warren (D-Mass.) put it this way: “There’s so much that we all agree on, that we ought to be able to get a deal.” And Rep. Katie Porter (D-Calif.), the deputy chair of the Progressive Caucus, said she’s “open” to Manchin’s energy proposal provided “it’s paired with a real meaningful commitment, and actual movement.” Biden’s State of the Union address called for congressional action on some of the individual portions of the wide-ranging social spending measure that the House passed last year, including drug pricing, child care, tax hikes on the wealthy and climate change. The momentum that Democrats had mustered for their trillion-dollar-plus proposal has mostly evaporated, and some lawmakers are increasingly open to slimmed-down legislation or even standalone bills to address their policy priorities.

**The plan trades-off**

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

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

#### Extinction from climate

Åberg et al 21 (Anna Åberg, research analyst in the Environment and Society Programme of Chatham House, formerly served as desk officer at the Swedish Ministry for Foreign Affairs, MSc Development Studies, London School of Economics and Political Science, BSc Business and Economics, and Politics and Economics, Lund University; Antony Froggatt, deputy director and senior research fellow in the Environment and Society Programme of Chatham House; and Rebecca Peters, Queen Elizabeth II Academy Fellow in the Environment and Society Programme of Chatham House, doctoral candidate at the University of Oxford with the UK Foreign, Commonwealth and Development Office REACH Water Security programme, MSc Development Economics, MSc Water Science and Policy, Marshall Scholar; “Raising climate ambition at COP26,” Chatham House (the Royal Institute of International Affairs, London) Research Paper, October 2021, https://www.chathamhouse.org/sites/default/files/2021-10/2021-10-05-raising-climate-ambition-at-cop26-aberg-et-al-pdf.pdf)

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

### 1NC

#### Attempts to achieve optimal competition subscribe to the notion of *Homo Economicus*---a desire for economic rationality that necessitates dividing society into governable entities---the impact is violent dispossession---vote NEG to forefront an analysis of institutional power relations.

Vicencio 14 (Dr. Eduardo Rivera Vicencio, Professor of the Department of Business and Economics at the Autonomous University of Barcelona; “The Firm and Corporative Governmentality: From the Perspective of Foucault;” International Journal of Economics and Accounting, DOI: 10.1504/IJEA.2014.067421, TM) [language modified]

Foucault explains the change of liberal governmentality to neoliberal governmentality in the 20th century in a detailed description of German neo-liberalism and, in less detail, the North American anarchic capitalism and French neoliberalism. In the case of Germany, the implementation of neoliberalism in the post-war period occurs in 1948, in a non-existent state and within a framework of state reconstruction requirements imposed by the USA and England. However, the theoretical origins lie in the Freiburg School in the late 1930s.

What happens at this stage with the onset of neoliberalism, is the reversal of the analysis performed by ordoliberals, with a state which provides economic freedom, a free market as the organising principle of the state, “ … a state under the supervision of a market rather than a market under the supervision of the state”. Moreover, “For liberals, the exchange is not the essence ... the essence of the market is competition”. This takes on again the classical conception that competition can ensure economic rationality. For this reason, neoliberalism becomes the creator of public law, based on the support and legitimacy of the state governments [Foucault, (2007), p.149 and 151].

Using three examples, Foucault shows the style of a neoliberal government; the first of which is a monopoly. It is referred to as a result of competition of the capitalist system, the product of capital concentration but with the objective of ensuring free competition. The state should intervene but the market itself should also respond to monopoly prices and, facing this possibility, the firm itself should opt for competitive market prices. The second example conforms to economic action which represents ongoing monitoring and activity through regulatory actions and ordering actions. In regulatory actions, price stability (inflation control), tax burden (as a way to influence savings and/or investments) and ordinary actions within the economic political framework are found and referred to as population techniques, learning and education, legal system resource availability, etc. Foucault’s third and final example is social policy which means that the economy ensures that each individual has a sufficient income to live alone or in a group and can be insured against the risks of life, old age and death and, called by the Germans, individual social policy or ‘social market economy’. He comes to the conclusion that the true and essential social politics according to neoliberalism is economic growth [Foucault, (2007), p.163 and 178].

However, the application of this scheme of social policy is not possible in Germany due to the Bismarck Socialist State, the influence of Keynesian economics or security systems that are applied in Europe. From this rejection of the application of neoliberal social policy in Germany, the Chicago School developed the ‘American anarchic capitalism’ along with the privatisation of insurance systems, where each individual, either personally or as a group, could insure against risks. This practice of neoliberal politics, says Foucault (2007, p.179) is what we see today in France (February 14th 1979 class).

Governmentality in the field of economic neoliberal thinking is a company subject to the mechanisms of competition and competitive dynamics; a partnership firm building a social network where the basic units are the way of business, where the objective of neoliberal policies is to spread, multiply and differentiate between firms. “The homo economicus who attempts to reconstruct is not the man of the exchange or the consumer, rather he is the [person] ~~man~~ of the firm and the production man” [Foucault, (2007), pp.182–187].

This subjection of society is not only economic it is vital for competitive play between companies, “... an institutional legal framework guaranteed by the state ...”; in this context, the firm becomes the key operator [Foucault, (2007), pp.209–213].

In the American neoliberalism study, as called by Foucault, anarchic capitalism is a business form based on human capital theory, where income is a capital return and, therefore, a wage is a capital income, inseparable from its holder, where the worker is a business in itself. Homo economicus is an entrepreneur, an economic subject and a legal subject; an interface between the government and the individual, a governable entity, which possesses innate elements and acquired elements. The first is genetic and the latter is the product of investing. In this way, “… the life of the individual – including the relationship, for example, with his private property, his family, his partner, his relationship with his insurance, his retirement – making it a sort of permanent and multipurpose business” [Foucault, (2007), pp.262–277].

Finally, a key element of this analysis is the civil society and its origins in the way to judge this economic subject, which is also the legal subject. “Civil society is the particular set in which it is necessary to relocate these ideal points constituted by homo economicus to manage them conveniently”. This is where the civil society and homo economicus form part of the same set of liberal governmentality technology, bound by the legal and political link [Foucault, (2007), p.336].

What unites individuals in civil society are ‘disinterested interests’ not a whole set of selfish interests and not the maximum profit in the exchange. This civil society groups sets of individuals in a number of nuclei; civil society is communal. Being the link between individuals is itself the principle of decoupling, when the economic loop is installed in society. It also works in reverse, “… the more progress towards economic status ... the more the constitutive bond of civil society and the more [hu]man is isolated is because of the economic loop with one and with everyone” [Foucault, (2007), pp..342–345]. Civil society is the engine of history [Foucault, (2007), p.347].

This paper is developed with the firm as the centre of neoliberal governmentality through the study of power relations of the firm and its discursive developments in this ideology, with reference to Foucault’s (1994, p.238) own recommendation, when he says, “… it should analyse institutions from power relations and not vice versa”

## Advantage 1

### Top

#### Alt cause – talent retention

Wipfli 22 --- Wipfli ranks among the top 20 accounting and business consulting firms in the nation. “State of community banking”, https://www.wipfli.com/-/media/wipfli/downloadable-files/FI-State-of-Community-Banking-2022-Outlook.pdf

Attracting, retaining and developing good employees is a challenge in most industries nationwide. How do you attract young talent? How do you develop your current team and incentivize those employees to stay?

Community banks have been facing that problem for years, but the solutions have been elusive. The key difference is urgency. COVID-19 only accelerated and compounded the issues of talent management in banks.

People in smaller communities who were interested in banking-related jobs previously had only the local options available to them. Now those same employees can work virtually for almost anyone, creating additional hurdles for community banks eager to hire.

#### Startups high and sustainable

Djankov & Zhang 21 --- Simeon Djankov, Policy Director, Financial Markets Group, London School of Economics, Eva (Yiwen) Zhang, Researcher, Peterson Institute for International Economics, “US business dynamism rises”, VOXEU, 03 March 2021, https://voxeu.org/article/us-business-dynamism-rises

In 2020, the creation of US startups shot up by 24% relative to the previous year. This is the largest annual increase since business statistics started being collected in the US. Some of this boom in entrepreneurial activity is accounted for by the migration of businesses to online activity.

This business dynamism is unexpected. Vox columns written in early 2020 (e.g. Baker et al. 2020, Coibion et al. 2020, Sedláček and Sterk 2020, Calvino et al. 2020) recorded steep falls in entrepreneurial activity across G7 economies. In a recent paper (Djankov and Zhang 2021), we show that such falls were indeed the norm across advanced economies at the end of 2020. The US is an exception, fuelled by the government assistance provided to small businesses.

The focus on new entry is warranted, as research in the US shows that young firms tend to grow faster than incumbents (Haltiwanger et al. 2013). Haltiwanger et al. (2017) document that startups account for about 40% of aggregate growth in total factor productivity, 50% of aggregate output growth, and 60% of aggregate employment growth. Another important benefit of entrepreneurship is the ability of new firms to increase competition, thus reducing mark-ups (Djankov et al. 2002).

Still, the positive impact of these entrants on long-term economic growth should be taken with a grain of salt, as research shows that firms born during recessions not only start smaller but also tend to stay smaller in future years, even when the economy recovers (Sedláček and Sterk 2017). Also, the crisis has reshaped the outlook for many sectors, more so than previous crises have. Firms and workers have invested in years’ worth of digital transformation in just a few months (Baldwin 2020). This transformation is likely to result in significant further churning among businesses in the months and years to come.

#### Also true of AgTech

Howarth 22 --- Josh Howarth, Co-founder of Exploding Topics, January 19, 2022, https://explodingtopics.com/blog/agtech-startups

The agriculture industry is gradually transforming into the next high-tech sector. Technologies like blockchain, artificial intelligence, and computer vision are being leveraged to improve crop yields, supply chains, and sustainability. Due to its potential, total investments in the agtech sector reached over $4.3 billion during the first half of 2021. By 2025, the market value of the global agtech industry is expected to surpass the $22.5 billion mark. As new technologies continue being integrated into agriculture, the number of agtech startups is rising. We’ve rounded up 20 of the fastest growing agtech companies to keep an eye on.

### 1NC---UQ

#### Innovation is high on all fronts now.

Asutosh Padhi 11-8, Managing Partner for McKinsey in North America, et al., 11/8/21, “A sustainable, inclusive, and growing future for the United States,” https://www.mckinsey.com/featured-insights/sustainable-inclusive-growth/a-sustainable-inclusive-and-growing-future-for-the-united-states

For all the United States’ economic frailties, vulnerable populations, and left-behind places, it can count on major strengths, including the resilience of its economy, the strength of its private sector, and a long tradition of innovation. On their own, the following assets will not be enough to generate sustainable and inclusive growth, but they are the essential tools needed to help the country do so:

A dynamic and resilient economy. Over the past two decades, the US economy has demonstrated remarkable resilience and dynamism. The United States rebounded from the 2008 financial crisis with robust aggregate employment growth, low inflation, and technological innovation that boosted entrepreneurship and sharply reduced prices for many consumer goods and services. Further, its economy is showing strong signs of recovery from the COVID-19 pandemic.

A robust market economy and private sector with a record of delivering. Despite the recent slowdown, US GDP per capita has more than doubled over the past 50 years, and its personal-consumption expenditure has almost tripled during that period. The domestic-business contribution to US GDP per capita has risen fourfold. Businesses account for 83 percent of US technology investment, 76 percent of US R&D investment, and 81 percent of US labor-productivity growth in the 21st century. And Americans are living longer and have more leisure time.

An unparalleled innovation engine. The United States is at the forefront of advanced technologies, from biotechnology to AI, with contributions from companies, universities, and government agencies. These technologies could be critical new sources of growth and potentially help further both inclusion and sustainability—with advances in climate science especially relevant for the latter. Innovation is not just taking place in laboratories: the COVID-19 crisis accelerated the adoption of new technologies. A McKinsey survey conducted in October 2020 found that that roughly half of the respondents reported increasing digitization of customer channels (such as through e-commerce, mobile apps, and chatbots), and two-thirds reported accelerating adoption of automation and AI.

Promising prospects for productivity growth. Evidence from some companies and sectors suggests that the United States can rebound from the COVID-19 pandemic with renewed vigor. Indeed, the pandemic accelerated trends that will likely have persistent effects with profound economic implications, hastening the potential for productivity gains—even in the sectors that have historically been slow to change. For example, in retail, with the exception of e-commerce players, companies had been slow to adopt digital sale strategies, doing so mostly as a way to complement Main Street retailing. That changed abruptly during the pandemic. It will take more companies and more sectors contributing to productivity to drive national-level productivity. If all US companies and key large sectors adopt the range of digital and productivity acceleration already seen during the pandemic, the nation could see around 1–1.5 percent higher growth across sectors over the next three years (Exhibit 5).

Prospect of robust demand in the near term, although it would need to be sustained. Stimulus programs related to the pandemic have boosted personal incomes and represent considerable savings ready to be spent. From March to April 2020 alone, the personal savings rate in the United States has shot up to nearly 34 percent, from 13 percent, and remained above 15 percent for most of the pandemic as households cut spending in the face of uncertainty. This large cache of accumulated savings and pent-up demand could drive growth momentum as people start to spend at prepandemic levels, assuming widespread vaccinations and a benign “COVID-19 exit” scenario.

Growing commitments to carbon and net zero. Looking ahead, the urgency of climate mitigation and adaptation is now more widely acknowledged in the United States and elsewhere, the resetting of government and corporate agendas is under way, green-tech costs are favorable and declining, and climate- and infrastructure-related investments can boost jobs. Many US companies are making net-zero commitments and beginning to develop plans to achieve them. Consumers may be more open to demanding more sustainable goods and services. According to a McKinsey survey in October 2020, for example, more than half of the consumers surveyed said they would buy more products with sustainable packaging if their pricing matched that of conventionally packaged ones.

### 1NC---AT: China !

#### No China war or rise.

Norrlof ’21 [Carla; March 23; Visiting Professor at the Finnish Institute of International Affairs in Helsinki, Senior Fellow at The Atlantic Council and at Massey College, Associate Professor at the University of Toronto, and Research Associate at The Graduate Institute of Geneva; The Washington Quarterly, “The Ibn Khaldûn Trap and Great Power Competition with China,” vol. 44]

The return of great power rivalry has been the defining feature of the 21st century. Since the beginning of the new millennium, China and Russia have openly defied the United States and upset the stability of the liberal international order. Both China and Russia share physical and material attributes possessed by the United States that are traditionally required for great power status: land mass, a sea portal, a large population, and technology to field and develop a competitive military capability. Most scholars and policymakers agree that China presents the largest challenge to US interests and the US-led liberal international order. Economic and military growth in China has been astounding, surpassing Russian expansion. China’s outward extension is not primarily resource-based as is Russia’s but multidimensional, posing a structural challenge to US military and economic dominance.

Much ink has been spilled over the nature of US-China rivalry and whether the two great powers are destined for war. Structural factors figure prominently when predicting US-China relations. A famous deadly Greek trap describes how the fear of a hegemonic power sparks catastrophic war with a rising power. In the History of the Peloponnesian War, Thucydides writes, “What made war inevitable was the growth of Athenian power and the fear which this caused in Sparta.” 1 Thucydides’ statement has been widely adopted as a metaphor for the dangers associated with great-power transition. Both A.F.K. Organski’s power transition theory and Robert Gilpin’s realism see great-power wars as most likely to occur when a rising challenger is about to surpass a declining hegemonic power. 2 Today, the Thucydides Trap is highly relevant insofar as we have a clear incumbent power, the United States, and according to many measures of great powerhood, a clear rising power—China—with military, manufacturing, and commercial, and corporate power.

However, the analogy mismatches international hierarchy and regime type. In classical times, the incumbent land power, Sparta, was the authoritarian power who feared the rise of the democratic maritime power,

marked

Athens.3 This incongruity is not even the biggest problem with the analogy. In order for the Thucydides Trap to apply, China would have to significantly narrow the power gap with the United States. While China has caught up with the United States in important respects, it has not caught up with the United States in terms of the logic and networks that inform dominance in the key economic and security areas required for power transition.4 Apart from the obvious inhibiting factors of nuclear weapons and economic interdependence, the United States and China are nowhere close to the power parity likely to spark a major power war between them. The Thucydides Trap is a powerful analogy for bellicose dynamics between a hegemonic power and a rising power, but in the near term, war between the United States and China for the reasons proposed in the Thucydidean analogy is highly unlikely.

### 1NC---AT: I/L---AG Startups

#### Alt cause – talent retention

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### 1NC---AT: Warming !

#### No climate impact

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Advantage 2

### Top

#### No banking collapse --- safeguards from 08

Edelmann 2017 --- Christian Edelmann and Patrick Hunt, Harvard Business Review, “How the Great Recession Changed Banking” Oct 2017, https://hbr.org/2017/10/how-the-great-recession-changed-banking

It may feel as though the financial system hasn’t changed much in the decade since the downturn, but it has. The recession transformed investment banks and created a deep divide between banks that quickly remodeled their business and those that failed to move rapidly.

A dramatic expansion of regulation drove most of the change until now. Most of the regulation was meant to safeguard the financial system, and the taxpayers who had to bail it out, from another crisis. We expect investment banks to embark on an even more fundamental makeover during the next decade. This second transformation will be triggered not by regulation but by rapidly evolving technology. The banks that have nearly completed their regulatory agenda have a head start, since they can free up more financial and human resources to address evolving technology. The race is open and the gap between investment banks will widen even further as they race to adopt technological innovations and reconfigure their workforces to satisfy changing customer demands.

#### Econ resilient

Pringle 21 --- Kenneth G. Pringle, financial journalist with the Wall Street Journal and Bloomberg, “Lesson of the Century: Don’t Underestimate the Resilience of the U.S. Economy”, Barrons, Updated December 27, 2021 / Original December 22, 2021, https://www.barrons.com/articles/us-economy-stock-market-history-51640204442

If there’s one lesson we’ve learned from delving into Barron’s archives in our centennial year, it is this: Don’t underestimate the resilience of the U.S. economy and stock market. We saw that theme time and again as we published a series of retrospective pieces during 2021—and the resilience is strikingly evident still.

When the Covid-ravaged economy contracted in 2020, it was just the 19th time since 1920 in which real gross domestic product had declined, year over year. And nine of those years came between 1930 and 1949, a result of the Great Depression or post–World War II demobilization.

Even 2020 seems like an outlier, with growth expected in 2021 and 2022, despite recent downgrades prompted by the Omicron outbreak.

Big GDP jumps also were limited to the volatile ’30s and ’40s. Mostly, it has been a steady rise in GDP, from an estimated $670 billion in 1920 to a record $21.43 trillion in 2020. That’s a 30-fold increase, meaning that U.S. GDP has grown about 10 times as fast as the population, which has tripled from 106 million in 1920 to 331 million a century later.

America was a smaller, poorer, and very different place 100 years ago. Most folks lived on farms, without electricity or indoor plumbing. Horses outnumbered automobiles. Business and politics were the sole province of white men. Women had the vote but were still second-class citizens. Jim Crow laws made sure that Blacks weren’t fully emancipated.

The country also was in the grip of the Depression of 1920-21, the nation’s worst economic downturn to that point. It was a heck of a time for Clarence W. Barron to start a financial newsweekly. But he had seen the U.S. change from an agrarian to an industrial nation, and he felt there was no stopping the American business spirit.

He was right. Entrepreneurs from Henry Ford and Thomas Edison to Elon Musk and Mark Zuckerberg have, to paraphrase Facebook’s founder, moved fast and broken things, turning new technologies into life-changing new industries.

They’ve also created companies that have lasted. General Electric , AT&T, Macy’s , DuPont , Sherwin-Williams, and many other of today’s household names date to the 19th century or earlier. These companies are the backbone of the economy, the force that gives it such resilience.

Barron’s did have doubts from time to time. We once worried that modern leaders “seem puny figures beside the speculative kings of the last century,” but that was in 1936, and since then, plenty of worthy successors have arisen to challenge the titans of old.

Here are some who helped keep the economy churning over the past 100 years.

Automobiles were dangerous, open-air affairs until the late 1920s, and there weren’t many passable roads. They were novelties, playthings for the rich, and few saw that changing.

Henry Ford perceived greater possibilities. He perfected mass-production techniques that let him build the Model T faster and cheaper than the handmade competition. Ford “put the motor within the reach of the ordinary wage-earning family and the cost is half that of a horse,” Barron wrote in 1924.

While most Americans still depended on actual horsepower for conveyance and labor, “peak horse” had been reached. Ford’s automobiles and tractors were putting equines out to pasture. Railroads’ best days were past, too.

Road-building would catch up with car buying, culminating in the Interstate Highway System, which set loose America’s car culture—along with its suburbs, sprawl, and pollution.

Ford’s company now is heading strong into the age of the electric vehicle. Yet, his legacy is complicated: He was a vocal anti-Semite who hired strikebreaking goons and saw conspiracies everywhere. “Moral grandeur,” as Barron’s wrote in 1923, doesn’t always accompany industrial genius.

This magazine has rarely reviewed movies, but Fantasia— Disney ’s feature-length 1940 cartoon starring a famous mouse—caught our attention.

The “greatest change in the motion picture art since the coming of sound,” Barron’s wrote, was “the new sound-production technique” in Fantasia. A major reason that the audience felt it was because “sitting directly in the pit with the orchestra” was Disney’s use of eight, state-of-the-art audio oscillators bought from a new company, Hewlett-Packard .

Bill Hewlett and David Packard famously started work in a rented Palo Alto garage, now a landmark billed as the “Birthplace of ‘Silicon Valley.’ ”

Oscillators were the start of a very fruitful partnership. By 1976, Hewlett-Packard was among those rare companies that “combine technological excellence, crackerjack marketing, and financial soundness,” wrote Alan Abelson, Barron’s celebrated columnist and editor.

The founders stepped away from active management in the late ’70s, and some big names followed, including Carly Fiorina. She pulled off the 1999 merger with Compaq that made H-P the No. 1 PC producer—and cost her the job.

Many mergers and acquisitions later, HP Inc. is the legal descendant of the Palo Alto start-up. And the work begun in that garage helped turn an analog world digital.

Muriel Siebert had to announce the news herself.

“First lady member of the New York Stock Exchange!” read the ad, featuring Siebert’s smiling face, which ran in Barron’s on Jan. 8, 1968, and in The Wall Street Journal four days earlier.

Siebert started as a $65-a-week equity-research trainee at Bache & Co. in the 1950s, eventually becoming the first woman to head one of the NYSE’s member firms. Siebert Financial was among the first to offer discounted trades, and was also a leader in moving to online trading.

Siebert, who went on to become New York state’s first female superintendent of banks, was lionized upon her 2013 death, by which time workplaces across the country had done more to improve their record on hiring and promoting women and people of color.

In finance, the capital managed by retail investors is known as dumb money. That’s opposed to the smart money of large financial institutions, whose resources and influence enable greater returns.

In creating the index fund, Jack Bogle made dumb money a lot smarter. The concept is simple: Since the S&P 500 index routinely outperforms managed mutual funds, a passive fund composed of S&P 500 shares also would beat managed funds. And with no fees, to boot.

“This is a new and unique concept in investing whose time has come,” Bogle told Barron’s in 1978, two years after launching the precursor to the Vanguard 500 Index fund.

Indexing wouldn’t take off until the ’90s. But by 2019, index funds had surpassed actively managed funds in assets, having “trounced active funds for a decade.” Yet, passive investing brought critics, who “warn of market meltdowns,” we wrote in 2018, noting that one analyst “went so far as to call index investing ‘worse than Marxism.’ ”

Bogle, who died in 2019, was clear that he didn’t want everyone indexing. But he did democratize the once-exclusive club of Wall Street. Upon his death, we wrote, “If one man can be held responsible for today’s market—for better or worse—it’s Jack Bogle.”

It didn’t take long for Clarence Barron’s bet on the American business spirit to prove prescient. Just months after his magazine’s debut, on May 9, 1921, the depression ended and the Roaring ’20s began. By 1927, Barron’s circulation had reached 30,000.

Barron made the connection between public information and markets. Wall Street profits on opacity; the job of the financial press is to shed light into the murk, giving “the thoughtful investor” a chance “to budge the world of wealth,” as he put it.

As Barron’s embarks on its second century, the U.S. economy shows little signs of slowing. It’s impossible to minimize the pandemic’s damage, with 800,000 U.S. deaths and Omicron causing new waves of cases. Yet, the economy seems to be shrugging it off, with today’s business leaders and workers finding a way to keep things running. The economy churns on.

#### Collapse doesn’t cause war

Walt 20 [Dr. Stephen M. Walt, Robert and Renée Belfer Professor of International Relations at Harvard University, PhD in International Relations (with Distinction) from Stanford University, MA in Political Science from the University of California, Berkeley, “Will a Global Depression Trigger Another World War?”, Foreign Policy, 5/13/2020, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

#### Slow growth doesn’t reduce national security

VALLONE 20 --- MATT VALLONE, Director of Research & Analysis at Avascent. He leads a team of defense and space-focused analysts, “U.S. DEFENSE SPENDING DURING AND AFTER THE PANDEMIC”, War on the Rocks, July 31st 2020, https://warontherocks.com/2020/07/u-s-defense-spending-during-and-after-the-pandemic/

The conventional wisdom in defense budget forecasting is that economic downturns trigger a decline in defense spending. However, the historical evidence doesn’t seem to support this assumption. The line graph in the chart below represents constant “total obligation authority,” which is the amount of money actually spent by the Department of Defense (Table 6-1 in the Fiscal Year 2021 Green Book) while the vertical bars represent years where there were recessions (drawn from the National Bureau of Economic Research). A quick review of the graph demonstrates that some recessions have presaged declines in U.S. defense spending while others have preceded increases.

Similarly, a regression of real GDP growth and defense spending growth from 1948 to 2019 shows that there is almost no relationship between the two figures. In measuring how closely two variables are related, a regression calculation results in something called an “r-squared” value, which is what percent of the change in an output variable depends on an input. If you compare real GDP growth and defense spending growth for this period, the r-squared is .1949, which is fairly low. The scatter plot below suggests that there is a relationship between the two but that the connection is not particularly strong. Simply put, a reduction in defense spending following this downturn is certainly possible, but it is not foreordained.

### 1NC---UQ

#### Economy wrecked – predictive

Bartash 12-18 [Jeffry Bartash, Reporter, MarketWatch, "Sticky Inflation, Bigger Paychecks, Fading Stimulus," MarketWatch, 12/18/2021, <https://www.marketwatch.com/story/sticky-inflation-bigger-paychecks-fading-stimulus-how-the-u-s-economy-is-shaping-up-for-2022-11639758215>]

Americans are likely to face more big surprises in 2022. MarketWatch spoke with a handful of economists around the country about the big questions facing the U.S. as it enters a third year of the pandemic. Here’s what they had to say.

Omicron

The pandemic is still the biggest influencer of the economy by far.

“The virus is still boss. There is no guarantee that a worse variant won’t come along,” said corporate economist Robert Frick of Navy Federal Credit Union in northern Virginia. “Everyone wants to put the pandemic behind them, but it’s still the major factor.”

The good news is, the U.S. economy has largely adapted to the coronavirus and managed to keep expanding. “I do think wave upon wave, people are learning to live with this,” Federal Reserve Chairman Jerome Powell said last week.

The problem? No one knows what’s next. Take the omicron. It’s spreading faster than any other variant and is igniting a panic in Europe.

Omicron appears less deadly, but the U.S. will very learn soon just how much damage it can do by watching what happens in the United Kingdom, where it spread earlier and more rapidly.

End of stimulus

The Biden White House’s ambitious $2 trillion social-spending plan called Build Back Better appears stalled and might not pass at all.

Some economists contend the end of fiscal stimulus could lead to withdrawal symptoms in 2022. “We have been living off the government for two years now,” said Joel Naroff of Naroff Economic Advisors in Holland, Pa.

Still, most economists think the U.S. is primed to grow a frothy 3% to 4%.

How come? Americans amassed big savings during the pandemic, for one thing. Wages are also rising as at the fastest pace in decades because of a major labor shortage, putting even more money in people’s pockets.

Businesses, for their part, are investing heavily in technology to get around the labor shortage and to boost production.

“Just re-stocking the shelves is going to contribute significantly to U.S. growth,” said Luke Tilley, chief economist at Wilmington Trust in Philadelphia. “That’s an undercovered story.”

Inflation

The biggest increase in U.S. inflation in 2021 in almost 40 years caught Wall Street DJIA and Washington by big surprise. The yearly rate of inflation hit 6.8% by one measure and 5% by another.

The Fed is now scrambling to get ahead of the problem and reassure investors that price pressures will subside in the next year.

Pretty much every economist thinks inflation will slow, and slow sharply, next year. But few are on board with the Fed’s forecast that the rate of inflation will ease to 2.6% in 2022.

“I do think we will see inflation pressures ease over time, but I don’t think we are heading back to the sub-2% inflation rates that we have been accustomed to,” said Jim Baird, chief investment officer of Plante Moran Financial Advisors in Southfield, Mich.

Naroff agrees. “What is the new trend? The Fed keeps saying 2%. I don’t think that’s realistic.”

Interest rates

The combination of higher inflation and the Fed moving to phase out its own massive monetary stimulus for the economy is bound to nudge interest rates higher in 2022.

The central bank appears on track in 2022 to raise a key short-term rate its kept near zero during the pandemic for the first time since 2018.

Higher borrowing costs are likely to exert a small drag on the economy. The 30-year mortgage rate, for example, could climb to 3.75% from around 3% right now. Car loans could also become more costly.

Frick thinks higher rates will kill off the frenzy of home refinancing and restrain home sales. On the flip side, savers who took a beating during the pandemic could finally make a little money on CDs and bank deposits if inflation nosedives.

“A lot of people are being crushed by low rates and high inflation,” Frick said.

Labor shortage

Six months ago, just about every forecaster expected the millions of people who lost a job or left the labor force early in the pandemic to return to work. It didn’t happen.

Now many wonder if several million workers have left the labor force for good. Lots of baby boomers retired and record stock market gains have made it easier for them to stay at home.

“A lot of people have permanently removed themselves from the labor market,” Tilley said.

If he’s right, the labor shortage is not going way. But it’s not all a bad thing. Businesses might struggle to fill a near record number of open jobs, but workers will have more money in their pockets to spend.

Rising wages

One of the silver linings of the pandemic-induced labor shortage is that workers are reaping the bigger increase in paychecks in decades. Average hourly wages, for instance, have climbed almost 5% in the past year.

By contrast, wage gains barely grew more than 2% a year in the prior decade.

That’s not a bad thing, economists say. After all, corporate profits are at an all-time high. They can afford to pay more.

Even more important, consumer spending is the main engine of U.S. growth. It accounts for about 70% of all economic activity.

“Businesses are going to complain about it, but in the long run that is great for the economy,” Frick said. “People were getting used to a sub -2% economy. If we want to get back to 3%, we need to pay people more.”

Supply shortages

A series of bottlenecks — clogged ports, lack of warehouse space, too few truck drivers — have spawned the biggest supply shortages in decades. The gridlock is expected to fade eventually, but the problems will persist well into 2022.

The coronavirus is still a major disruptor, for one thing, and there’s too many weak links in the chain, so to speak, to iron out the problems quickly. Even the Fed can’t do much.

“You can raise interest rates to reduce demand, but you can’t raise interest rates to unload cargo ships or speed up production in Asia,” Baird said.

Many companies are plotting ways to secure more stable sources of supply. Some are even considering moving operations back to the U.S. from other countries like China. But that’s no quick fix, either.

“You can’t bring it all back to the U.S. very quickly,” Naroff said.

The unknown unknowns

Former U.S. Defense Secretary Donald Rumsfeld once quipped it was impossible to know what would happen in the future because of “unknown unknowns.”

Economists have been humbled by the past year — they were wrong a lot and missed many major developments. They will almost assuredly err again.

### 1NC---AT: I/L

#### Econ’s resilient

Palha 17 – Sol Palha, Head Financial Analyst at Tactical Investor, Writer at The Street, Contributor at Huffington Post, Master’s Degree in Psychology from Columbia University, Lecturer at Pasiad International, “Is A Spectacular Stock Market Crash Just Around the Corner?”, 2017, http://www.huffingtonpost.com/entry/is-a-spectacular-stock-market-crash-just-around-the\_us\_599dbd8fe4b056057bddd035

The stock market crash story is getting boring and annoying to a large degree. Since 2009, there has been a constant drumbeat of the market is going to crash stories. In 2009, many experts felt that the market had rallied too strongly and that it needed to pull back sharply before moving higher up. They were calling for 15%-20% correction. Ten years later and most of them are still waiting for this so-called crash. A stock market crash is a possibility but the possibility is not the same thing as certainty, and this is what seems to elude most of the naysayers. One day they will get it right as even a broken clock is correct twice a day. In the interim waiting for this stock market crash has cost these experts a fortune, both in lost capital gains and actual booked losses if they shorted this market.

It’s 2017, and the markets are overbought, and we agree that they need to let out some steam, but as for a crash that will only occur when sentiment turns bullish. The crowd has not embraced this market and until they do corrections but not crashes is what we should expect. In fact, we penned an article titled “Dow Could Trade to 30K But not before This Happens”, where we discussed the possibility of the Dow trading to 30k before it crashes. The one factor that could alter this outlook would be for the masses to turn bullish suddenly.

This market will experience a spectacular crash one day; nothing can trend upwards forever and eventually the market has to revert to the mean. Markets never crash on a sour note; the crowd is chanting in joy when the markets suddenly change direction. A simple look at previous bubbles will prove this; the housing bubble, for example, did not end on a note of fear; the crowd was ecstatic. Even the Tulip bubble that lasted from 1634-1637 ended on a note of extreme joy.

Jim Rogers states that the next crash will be the worst one we have seen in our lifetimes.

We’ve had financial problems in America — let’s use America — every four to seven years, since the beginning of the republic. Well, it’s been over eight since the last one. This is the longest or second-longest in recorded history, so it’s coming. And the next time it comes — you know, in 2008, we had a problem because of debt. Henry, the debt now, that debt is nothing compared to what’s happening now.

In 2008, the Chinese had a lot of money saved for a rainy day. It started raining. They started spending the money. Now even the Chinese have debt, and the debt is much higher. The federal reserves, the central bank in America, the balance sheet is up over five times since 2008. It’s going to be the worst in your lifetime — my lifetime too. Be worried Business Insider

In a broad manner of speaking, he is right, but the proverbial question as always is “when”; so far the naysayers have missed the mark by 1000 miles. This entire rally has been based on the fact that the Fed artificially propped the markets by keeping rates low for an insanely long period and infusing billions of dollars into the markets. One day the pied piper is going to collect but as we have stated over and over again over the years, that until the masses embrace this market, a crash is unlikely. A strong correction is, however, a certainty; it’s just a matter of time.

The market has defied every call, and even some of the most ardent of bulls are now nervous; we stated this would occur over two years ago. The Market has put in over 36 new highs this year and is living up to the new name we gave it late in 2016. Up to that point, we referred to this market as the most hated bull market of all time; after that, we started to refer to this market as the most Insane Stock Market Bull of all time. Insanity by definition has no pattern so expect this market to do things no other market has ever done before.

The markets will crash one day but these so-called experts have no idea of this event will occur

## Advantage 3

### Top

#### Slow growth doesn’t cause populist support

Mutz 18 --- Diana C. Mutz, Professor of Political Science and Communication Director, Institute for the Study of Citizens and Politics, “Status threat, not economic hardship, explains the 2016 presidential vote”, PNAS, May 8, 2018 115 (19), https://www.pnas.org/content/115/19/E4330

There are two reasons for skepticism regarding the assumption that personal economic hardship drove Trump support. First and foremost, over many decades of scholarship, evidence of voters politicizing personal economic hardship has been exceedingly rare (8). Although aggregate-level evidence has been suggestive of a public that blames incumbents for general economic downturns and rewards incumbents for economic gains, these relationships seldom hold up at the level of individual economic hardship. For example, those who recently lost jobs are unlikely to blame government policy for their personal circumstances (9), and those who have personally suffered financially under a given administration are no more likely to vote against the incumbent (10, 11). Across a wide range of issues, scholars have found that citizens seldom form policy or candidate preferences on the basis of their family’s personal economic self-interest. This is not to suggest that citizens never do so, but the conditions under which this occurs are very rare (12, 13). Even membership in groups with economic interests that have been helped or hurt seldom changes political preferences (14).

A second reason for skepticism regarding the left behind thesis involves timing. Trump’s victory took place in the context of an economic recovery. Throughout the year preceding the election, unemployment was falling, and economic indicators were on the upswing. Likewise, the dramatic drop in US manufacturing jobs took place during the first decade of the 21st century; since 2010, manufacturing employment in the United States has actually increased somewhat (15). Research on economic voting suggests that recent economic events are most influential for voting (16, 17). Given all of the positive economic indicators, why would 2016 be ripe for an economic backlash? The most common explanation is that it is precisely those who did not recover from the Great Recession of 2008 who elected Trump, those who were left behind by virtue of ongoing joblessness and/or stagnant wages.

### 1NC---AT: Info War !

### 1NC---AT: Populism !

#### Alt causes to rural decline

Richard Florida 18, professor at the University of Toronto's School of Cities and Rotman School of Management and a distinguished visiting fellow at New York University’s Schack Institute of Real Estate, “America's Polarization Threatens to Undo Us,” Bloomberg CityLab, 1/25/18, https://www.citylab.com/equity/2018/01/americas-polarization-threatens-to-undo-us/551483/

On top of America’s long-running political divide between red and blue states, and its widening economic divide between the rich and the poor, there is a troubling gap between its geographic winners and losers. The United States is growing spatially more unequal, in ways that are ripping the country apart and threaten to undermine prosperity for all of us.

New data released earlier this week by Mark Muro and Jacob Whiton of the Brookings Institution’s Metropolitan Policy Program get to the heart of the matter. Bigger cities are prospering more than smaller cities, and much, much more than rural areas. And the trends are accelerating.

Between 2010 and 2016, the 53 largest metropolitan areas accounted for two-thirds of growth in economic output and almost three-quarters of job growth, despite making up just 56 percent of the country’s population. Between 2014 and 2016, these same metros accounted for 72 percent of economic growth and 74 percent of job growth.

On the flip side, small metros—those with fewer than 250,000 people—saw their share of the nation’s economic output shrink by 6.5 percent between 2010 and 2016. Rural areas saw net population decline over this same period, and in 2015, saw their modest rate of employment growth actually decrease.

The political repercussions of these trends are profound. The growing divide between large, dense, diverse winners in the knowledge economy and the rest of the country has fueled the populist political climate that landed Donald Trump in office and put conservative Republicans in control of a large share of governors’ mansions and state legislatures. As my Atlantic colleague Ron Brownstein points out in a recent essay for CNN, the voters who put this cast of characters in power are overwhelmingly from economically lagging areas.

Trump won an overwhelming share of U.S. counties, 2,600 of them, five times more than Clinton. But Clinton’s seemingly meager 500 counties accounted for 72 percent of the nation’s growth in economic output and two-thirds of its job growth between 2014 and 2016. Indeed, Clinton won 79 of the 100 counties that saw the greatest net economic growth over that period, and 76 of the top 100 in job growth.

The rub is that the declining parts of America now control our politics, and not just nationally, but also in the states. As Brownstein sums up: “The nation is poised for even greater tension between an economic order that increasingly favors the largest places—and a political dynamic that, for now, sublimates them to the smaller places that are economically falling behind.”

Far from Making America Great Again, Trump and the GOP are putting into place a backward-looking economic and social policy that threatens to undermine the key pillars of American innovation and economic prosperity. They are curtailing immigration and excluding global talent; slashing federal spending for research and development; lashing out at gay and women’s rights; cutting back on spending for state universities; and making efforts to undermine and preempt cities.

Once America’s innovative engine is dismantled, and talented people start to go elsewhere, it will be hard to put it back together again. For the first time in a very long time—perhaps since the Civil War—America’s divides threaten to put it on the wrong side of history.

Moreover, cities are not immune to this populist backlash, no matter how much they think they are. Back when Trump was making reality TV shows and venting about Barack Obama’s birth certificate, Rob Ford was elected mayor of Toronto, one of the fastest-growing, most technologically advanced, diverse and socially progressive places on the planet. He was elected by a multicultural, suburban populist coalition that felt it was being left behind by a small group of downtown urban elites. As I said then, if Ford could happen in Toronto, more and worse are likely to follow. Trump is not likely to be the end of this trend. It may even take root in U.S. cities.

That’s because the dynamics underlying the rise of populism are broad and encompassing. They are ricocheting through places like Toronto and much of Europe (notably the U.K. with Brexit), as well as the United States. Recent studies find a hauntingly similar divide between urban and rural areas across the U.K. The political scientists Ronald Inglehart and Pippa Norris painstakingly document how such spatial inequality sowed the seeds of a backlash from lagging places and rural areas across Europe and much of the advanced world.

This spatially-induced backlash manifests more along cultural and political lines than economic ones. Study after study has shown that the great majority of populist voters, including Trump voters, are working-class or middle-class, and even affluent. What distinguishes them is that they are concentrated in places that are falling behind. Their political backlash takes the form of a cultural turn against the values that cities have come to represent, especially openness, diversity, tolerance, and inclusion.

Although there are policies that could help mitigate these trends, the depth of the spatial divide in the United States means that none of them are very feasible politically. One way to lessen it would be via federal strategies to redistribute economic activity across more places. But there is no way that is happening with Trump and the Republicans in power. Not only are they committed to serving the interests of the rich, they have also risen to power by exploiting our country’s divisions. The last thing they would want to do is heal them.

#### No correlation between rural decline and populism---other factors overwhelm.

Mutz 18 --- Diana C. Mutz, Professor of Political Science and Communication Director, Institute for the Study of Citizens and Politics, “Status threat, not economic hardship, explains the 2016 presidential vote”, PNAS, May 8, 2018 115 (19), https://www.pnas.org/content/115/19/E4330

There are two reasons for skepticism regarding the assumption that personal economic hardship drove Trump support. First and foremost, over many decades of scholarship, evidence of voters politicizing personal economic hardship has been exceedingly rare (8). Although aggregate-level evidence has been suggestive of a public that blames incumbents for general economic downturns and rewards incumbents for economic gains, these relationships seldom hold up at the level of individual economic hardship. For example, those who recently lost jobs are unlikely to blame government policy for their personal circumstances (9), and those who have personally suffered financially under a given administration are no more likely to vote against the incumbent (10, 11). Across a wide range of issues, scholars have found that citizens seldom form policy or candidate preferences on the basis of their family’s personal economic self-interest. This is not to suggest that citizens never do so, but the conditions under which this occurs are very rare (12, 13). Even membership in groups with economic interests that have been helped or hurt seldom changes political preferences (14).

A second reason for skepticism regarding the left behind thesis involves timing. Trump’s victory took place in the context of an economic recovery. Throughout the year preceding the election, unemployment was falling, and economic indicators were on the upswing. Likewise, the dramatic drop in US manufacturing jobs took place during the first decade of the 21st century; since 2010, manufacturing employment in the United States has actually increased somewhat (15). Research on economic voting suggests that recent economic events are most influential for voting (16, 17). Given all of the positive economic indicators, why would 2016 be ripe for an economic backlash? The most common explanation is that it is precisely those who did not recover from the Great Recession of 2008 who elected Trump, those who were left behind by virtue of ongoing joblessness and/or stagnant wages.

#### No impact to populism – their ev is hype.

Strobaek ’17 (Michael; 6/5/17; Chief Investment Officer, free-lance journalist, and political analyst for CNBC; CNBC, “From the cacophony of populism, is a stronger middle emerging?” <http://www.cnbc.com/2017/07/05/from-the-cacophony-of-populism-is-a-stronger-middle-emerging.html)>

One would presume that anger breeds irrationality, radicalism and political as well as economic instability. But it need not. Anger – or let us call it, less dramatically, dissatisfaction with current affairs – can also lead to **renewal and progress**. Indeed, this year's elections in **Europe** suggest that voters are rather heading in that direction, i.e. seeking greater stability as well as reform while rejecting angry populism which has no real solutions to offer for today's major issues. With this in mind, it should thus come as no surprise that the radical **right was soundly defeated** in **Austria**, the **Netherlands** and **France**, and that the AfD (Alternative for Germany) is in rapid decline in **Germany**. In Finland, the radical right has just split into two, pragmatists and "purists." In Italy, too, recent local elections suggest that populist promises alone do not convince the electorate. Similarly, the **setbacks for the Conservatives** in the U.K. election in part represented a rejection of simplistic chauvinistic slogans. Leftist populism in demise? Conversely, we see few signs that the radical left is benefiting from this trend. Those who believe that the gains of the Labour party in the U.K. – headed by a rather dogmatic old-style socialist – suggest that leftist populists stand a good chance to govern are likely to be disappointed. Quite to the contrary, even in countries that have suffered deep crises – Spain and Greece come to mind – voters have **become disillusioned** with their recipes. Bernie Sanders would not, we believe, have won the U.S. election had he been the Democratic opponent of Donald Trump. Returning to what looks like a detail of the U.K. election, the very strong performance of the Conservative leader in Scotland, Ruth Davidson, an avowed "(EU) remainer" and opponent of the Scottish National Party suggests that separatism, another form of "anger," may also be **on the way out**. The outcome of the Catalan vote in the fall, should it take place, will be a further test of this thesis. Finally, beyond Europe, recent **political shifts** in Argentina and the upheaval in Brazil also suggest that leftist populism is in demise. Let us hope that Venezuela will soon be able to rid itself of one of its more extreme forms. Return to the center Putting these observations together suggests to me that voters have in fact started to head away from the extremes back to the center. Emmanuel Macron won the French election on an **openly centrist** platform. The state elections in Germany recently boosted Angela Merkel's centrist CDU, but even if the SPD and Martin Schulz were to win in September, this would hardly signal a turn of the electorate in a radical direction. Voters seem to be seeking politicians who offer pragmatic solutions to the complex problems of the day rather than simplistic recipes. The next U.S. president, I dare predict, is quite likely to be an avowed centrist as well. Maybe the **disillusionment with radicalism** – in this case of a truly brutal nature – will even strengthen forces of compromise in the Middle East at some point in the not-too-distant future. All in all, fears of significant political destabilization and systemic disruptions thus seem **overdone**, which may be one reason why markets, equities in particular, have been so **stable and calm** until recently despite rather stretched valuations. Does this mean that we will, after all, experience the unabashed victory of economic and political liberalism that Francis Fukuyama proclaimed? This remains rather unlikely, in my view, for three reasons: First, our multipolar world suggests that national and regional interests will take precedence over those promoting free markets and unfettered globalization. Second, distrust of market solutions has not been overcome, not least due to the "misdeeds" during the financial crisis.

### 1NC---AT: I/L---Foreign Policy

#### Populism doesn’t thump foreign policy credibility

Tengjun 17 (Zhang Tengjun, Ph.D. in Diplomacy from Renmin University, M.A. in International Politics from Zhejiang University, assistant research fellow at the China Institute of International Studies, 6-11-2017, "Will Washington abandon world leadership under Trump?," Global Times, http://www.globaltimes.cn/content/1051172.shtml)

America under the rule of the business tycoon-turned politico has triggered worldwide concern for globalization and its future and raised doubts as to whether the most powerful country is seeking to give up world leadership. What's more, there is a view that the liberal international order is crumbling and Washington's retreat is the beginning of a great transformation. If the rise of Trump is viewed as a phenomenon, then its main significance lies in shaking the US' long-standing political ecology. Trump has mostly focused on domestic issues in the past five months, and the changes he has brought about to the country's foreign policy are actually less than expected. By his own admission, the "America First" position means that he puts most of his energy into addressing domestic affairs. His nature as a businessman determines the negotiability of foreign affairs. All the arrangements conducive to achieving his political goals can be compromised and changed. In this sense, the view that the US will abandon the world leadership is a pseudo-proposition. Hampered by a slew of conundrums at home, the Trump administration has yet to formulate an explicit global strategy or more specific Asia-Pacific policy. Its foreign policy is somewhat fragmented, subject to a severe lack of coherence and consistency. It has so far been handling diplomatic episodes quite passively. Though many of Trump's foreign policy measures are questioned by the international community at large, it should not be viewed as an abdication of US hegemony. Currently speaking, it would be wrong to draw the conclusion that Trump is intentional giving up regional and global dominance. Two main pillars of US hegemony are the military and financial sectors. The former is backed by military power far better than other countries, the strongest circle of allies, and military bases spanning the globe. The latter is heavily dependent on dollar hegemony and the US-dominated international financial system. Trump has no intention of abandoning American military hegemony. Instead, he seeks to boost military spending by 10 percent in the coming fiscal year, further equipping the ground force, air force and navy with advanced weaponry. In this way, he inherits many of Obama's strategies. In addition, Trump remains ambiguous toward the financial system under US governance. Given the domestic landscape, he will prefer trade protectionism and a curtailment in expenditure of public products. But he will never discard US financial leadership on the world stage. More importantly, the US dollar, as a major international currency, is closely related to the country's leadership, and Trump understands this well. To say the least, even if he once planned on giving up Washington's global leadership and drawing back to the North American continent, it seems that he lacks the capacity to do so. The existing international order features a US hegemony which dates back to the start of WWII and has since been maintained through the strenuous efforts of generations of governments. Washington is unlikely to detach itself from the decades-long, consolidated framework. The conception of "peace under American governance" begun in the US has spread to every corner of the world to the extent that it is America's allies, instead of the American people, that are most concerned with Trump leading from the White House. They fear that if Washington breaks its promises on security, the international order will be plunged into chaos and conflict. By then they will find themselves mired in gridlock. Furthermore, Trump will think twice and be prudent given domestic obstruction. Both the Democrats and the Republicans continue to support American leadership in the world; they merely differ on policy and how to best exert leadership.

# 2NC----ADA R6

## CP---Section 5

### 2NC---O/V

### 2NC---AT: Perm Do Both

### 2NC---AT: Perm Do CP

#### First, expand the scope---regulations don’t.

Lane 92 --- Mills Lane, Judge on the Second District Court of Nevada, “STATE, GAMING COMM'N V. GNLV CORP”, https://www.casemine.com/judgement/us/5914875dadd7b049344e3895

Moreover, an administrative agency is not required to promulgate a regulation where regulatory action is taken to enforce or implement the necessary requirements of an existing statute. K-Mart Corp. v. SIIS, 101 Nev. 12, 17, 693 P.2d 562, 565 (1985). "An administrative construction that is within the language of the statute will not readily be disturbed by the courts." Dep't of Human Res. v. UHS of The Colony, Inc., 103 Nev. 208, 211, 735 P.2d 319, 321 (1987). The Commission did not engage in ad hoc rule-making because the Commission did not expand the scope of the statute, but merely enforced the requirements of NRS 463.3715(2) in accordance with the plain dictates of the statute.

#### Contextual evidence proves---guidance documents interpreting Section 5 don’t expand the scope---merely alter enforcement.

Federal Register: Rules and Regulations - ‘9 (Federal Trade Commission - *16 Code of Federal Regulations*- 255 Guides Concerning the Use of Endorsements and Testimonials in Advertising Federal Acquisition Regulation; *Final Rule* - “Rules and Regulations” - Federal Register - Vol. 74, No. 198 - Thursday, October 15, 2009 - #E&F - https://www.ftc.gov/sites/default/files/documents/federal\_register\_notices/guides-concerning-use-endorsements-and-testimonials-advertising-16-cfr-part-255/091015guidesconcerningtestimonials.pdf)

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

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

#### Second, ‘increase prohibitions by… law’---regulations don’t.

John Roberts 15, Chief Justice, US Supreme Court, “Department of Homeland Security, Petitioner v. Robert J. MacLean,” 135 S.Ct. 913, WestLaw

The Government argues that this whistleblower statute does not protect MacLean because his disclosure regarding the canceled missions was “specifically prohibited by law” in two ways. First, the Government argues that the disclosure was specifically prohibited by the TSA's regulations on sensitive security information: 49 CFR §§ 1520.5(a)-(b), 1520.7(j) (2003). Second, the Government argues that the disclosure was specifically prohibited by 49 U.S.C. § 114(r)(1), which authorized the TSA to promulgate those regulations. We address each argument in turn.

\*390 A

1

\*391 In 2003, the TSA's regulations prohibited the disclosure of “ [s]pecific details of aviation security measures ... [such as] information concerning specific numbers of Federal Air Marshals, deployments or missions, and the methods involved in such operations.” 49 CFR § 1520.7(j). MacLean does not dispute before this Court that the TSA's regulations prohibited his disclosure regarding the canceled missions. Thus, the question here is whether a disclosure that is specifically prohibited by regulation is also “ specifically prohibited by law ” under Section 2302(b)(8)(A). (Emphasis added.)

The answer is no. Throughout Section 2302, Congress repeatedly used the phrase “law, rule, or regulation.” For example, Section 2302(b)(1)(E) prohibits a federal agency from discriminating against an employee “on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.” For another example, Section 2302(b)(6) prohibits an agency from “grant[ing] any preference or advantage not authorized by law, rule, or regulation.” And for a third example, Section 2302(b)(9)(A) prohibits an agency from retaliating against an employee for “the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation.”

1In contrast, Congress did not use the phrase “law, rule, or regulation” in the statutory language at issue here; it used the word “law” standing alone. That is significant because Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another. Russello v. United States, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983). Thus, Congress's choice to say “specifically prohibited by law” rather than “specifically prohibited by law, rule, or regulation” suggests that Congress meant to exclude rules and regulations.

\*392 The interpretive canon that Congress acts intentionally when it omits language included elsewhere applies with particular force here for two reasons. First, Congress used “law” and “law, rule, or regulation” in close proximity—indeed, in the same sentence. § 2302(b)(8)(A) (protecting the disclosure of “any violation of any law, rule, or regulation ... if such disclosure is not specifically prohibited by law”). Second, Congress used the broader phrase “law, rule, or regulation” repeatedly—nine times in Section 2302 alone. See §§ 2302(a)(2)(D)(i), (b)(1)(E), (b)(6), (b)(8)(A) (i), (b)(8)(B)(i), (b)(9)(A), (b)(12), (b)(13), (d)(5). Those two aspects of the whistleblower statute make Congress's choice to use the narrower word “law” seem quite deliberate.

\*\*920 We drew the same inference in Department of Treasury, IRS v. FLRA, 494 U.S. 922, 110 S.Ct. 1623, 108 L.Ed.2d 914 (1990). There, the Government argued that the word “laws” in one section of the Civil Service Reform Act of 1978 meant the same thing as the phrase “law, rule, or regulation” in another section of the Act. Id., at 931, 110 S.Ct. 1623. We rejected that argument as “simply contrary to any reasonable interpretation of the text.” Id., at 932, 110 S.Ct. 1623. Indeed, we held that a statute that referred to “laws” in one section and “law, rule, or regulation” in another “cannot, unless we abandon all pretense at precise communication, be deemed to mean the same thing in both places.” Ibid. That inference is even more compelling here, because the statute refers to “law” and “law, rule, or regulation” in the same sentence, rather than several sections apart.

Another part of the statutory text points the same way. After creating an exception for disclosures “specifically prohibited by law,” Section 2302(b)(8)(A) goes on to create a second exception for information “specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.” This exception is limited to action taken directly by the President. That suggests that the word “law” in the only other exception is limited to actions by Congress—after all, it would be unusual \*393 for the first exception to include action taken by executive agencies, when the second exception requires action by the President himself.

In addition, a broad interpretation of the word “law” could defeat the purpose of the whistleblower statute. If “law” included agency rules and regulations, then an agency could insulate itself from the scope of Section 2302(b)(8)(A) merely by promulgating a regulation that “specifically prohibited” whistleblowing. But Congress passed the whistleblower statute precisely because it did not trust agencies to regulate whistleblowers within their ranks. Thus, it is unlikely that Congress meant to include rules and regulations within the word “law.”

2

2The Government admits that some regulations fall outside the word “law” as used in Section 2302(b)(8)(A). But, the Government says, that does not mean that all regulations are excluded. The Government suggests two interpretations that would distinguish “law” from “law, rule, or regulation,” but would still allow the word “law” to subsume the TSA's regulations on sensitive security information.

First, the Government argues that the word “law” includes all regulations that have the “force and effect of law” (i.e., legislative regulations), while excluding those that do not (e.g., interpretive rules). Brief for Petitioner 19–22. The Government bases this argument on our decision in Chrysler Corp. v. Brown, 441 U.S. 281, 99 S.Ct. 1705, 60 L.Ed.2d 208 (1979). There, we held that legislative regulations generally fall within the meaning of the word “law,” and that it would take a “clear showing of contrary legislative intent” before we concluded otherwise. Id., at 295–296, 99 S.Ct. 1705. Thus, because the TSA's regulations have the force and effect of law, the Government says that they should qualify as “law” under the statute.

The Government's description of Chrysler is accurate enough. But Congress's use of the word “law,” in close connection with the phrase “law, rule, or regulation,” provides \*394 the necessary “clear showing” that “law” does not include regulations. Indeed, using “law” and “law, rule, or regulation” in the same sentence would be a very obscure way of drawing the Government's nuanced distinction between different \*\*921 types of regulations. Had Congress wanted to draw that distinction, there were far easier and clearer ways to do so. For example, at the time Congress passed Section 2302(b)(8)(A), another federal statute defined the words “regulatory order” to include a “rule or regulation, if it has the force and effect of law.” 7 U.S.C. § 450c(a) (1976 ed.). Likewise, another federal statute defined the words “State law” to include “all laws, decisions, rules, regulations, or other State action having the effect of law.” 29 U.S.C. § 1144(c)(1) (1976 ed.). As those examples show, Congress knew how to distinguish between regulations that had the force and effect of law and those that did not, but chose not to do so in Section 2302(b)(8)(A).

Second, the Government argues that the word “law” includes at least those regulations that were “promulgated pursuant to an express congressional directive.” Brief for Petitioner 21. Outside of this case, however, the Government was unable to find a single example of the word “law” being used in that way. Not a single dictionary definition, not a single statute, not a single case. The Government's interpretation happens to fit this case precisely, but it needs more than that to recommend it.

Although the Government argues here that the word “law” includes rules and regulations, it definitively rejected that argument in the Court of Appeals. For example, the Government's brief accepted that the word “law” meant “legislative enactment,” and said that the “only dispute” was whether 49 U.S.C. § 114(r)(1) “serve[d] as that legislative enactment.” Brief for Respondent in No. 11–3231 (CA Fed.), pp. 46–47. Then, at oral argument, a judge asked the Government's attorney the following question: “I thought I understood your brief to concede that [the word “law”] can't \*395 be a rule or regulation, it means statute. Am I wrong?” The Government's attorney responded: “You're not wrong your honor. I'll be as clear as I can. ‘Specifically prohibited by law’ here means statute.” Oral Arg. Audio in No. 11–3231, at 22:42–23:03; see also id., at 29:57–30:03 (“Now, as we've been discussing here, we're not saying here that [the word “law”] needs to encompass regulations. We're saying statute.”). Those concessions reinforce our conclusion that the Government's proposed interpretations are unpersuasive.

In sum, when Congress used the phrase “specifically prohibited by law” instead of “specifically prohibited by law, rule, or regulation,” it meant to exclude rules and regulations. We therefore hold that the TSA's regulations do not qualify as “law” for purposes of Section 2302(b)(8)(A).

B

3We next consider whether MacLean's disclosure regarding the canceled missions was “specifically prohibited” by 49 U.S.C. § 114(r)(1) itself. As relevant here, that statute provides that the TSA “shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security ... if the Under Secretary decides that \*396 disclosing the information would ... be detrimental to the security of transportation.” § 114(r)(1)(C).

This statute does not prohibit anything. On the contrary, it authorizes something—it authorizes the Under Secretary to “prescribe regulations.” Thus, by its terms Section 114(r)(1) did not prohibit the disclosure at issue here.

The Government responds that Section 114(r)(1) did prohibit MacLean's disclosure by imposing a “legislative mandate” on the TSA to promulgate regulations to that effect. See Brief for Petitioner 28, 33; see also post, at 2–3 (SOTOMAYOR, J., dissenting). \*\*922 But the Government pushes the statute too far. Section 114(r)(1) says that the TSA shall prohibit disclosures only “if the Under Secretary decides that disclosing the information would ... be detrimental to the security of transportation.” § 114(r)(1)(C) (emphasis added). That language affords substantial discretion to the TSA in deciding whether to prohibit any particular disclosure.

The dissent tries to downplay the scope of that discretion, viewing it as the almost ministerial task of “identifying whether a particular piece of information falls within the scope of Congress' command.” Post, at 3. But determining which documents meet the statutory standard of “detrimental to the security of transportation” requires the exercise of considerable judgment. For example, the Government says that Section 114(r)(1) requires the Under Secretary to prohibit disclosures like MacLean's. The Government also says, however, that the statute does not require the Under Secretary to prohibit an employee from disclosing that “federal air marshals will be absent from important flights, but declining to specify which flights.” Reply Brief 23. That fine-grained distinction comes not from Section 114(r)(1) itself, but from the Under Secretary's exercise of discretion. It is the TSA's regulations—not the statute—that prohibited MacLean's disclosure. And as the dissent agrees, a regulation does not count as “law” under the whistleblower statute. See post, at 1.

#### Third, ‘Core’---The FTCA’s not a core law.

Carl Felsenfeld 93, Professor of Law, Fordham University School of Law, “The Bank Holding Company Act: Has It Lived Its Life,” 38 Vill. L. Rev. 1, <https://core.ac.uk/download/pdf/144229861.pdf>

E. The Antitrust Laws

1. Core Laws

It is well established that, despite the "extensive blanket of state and federal regulation of commercial banking, much of which is aimed at limiting competition," 480 the United States' core antitrust statutes (the Sherman and Clayton Acts) apply to banks. 48 1 There is respectable opinion that "existing antitrust laws are fully adequate to guard against anticompetitive mergers or acquisitions, or other anticompetitive activity, in the banking industry." 482 A proposal to remove the BHCA, however, is not a suggestion that only the Sherman and Clayton Acts would impose antitrust limitations on banks. The other bank laws and regulations would continue in effect.483

Whether the antitrust laws are sufficient to curb bank abuse that is otherwise dealt with by the BHCA has been disputed. One relatively early opinion suggested that illicit bank behavior is "almost impossible to detect and prove in a court of law" and, consequently, explicit legislation, like the BHCA, which foreclosed banks from other fields was desirable.48 4 In contrast, a former Deputy Assistant Attorney General for Antitrust later opined that bank antitrust problems within the BHCA sphere are simply traditional antitrust issues that can be dealt with by those laws.485 He was countered by a then current Attorney General for Antitrust who believed the BHCA was essential to keep banks separate from commerce.486 Because these last two views were expressed in 1969 and 1970, one must assess current antitrust laws to analyze what view is valid today.4 7

There is a high degree of flexibility in the antitrust laws. One of the functions of the antitrust laws is to adapt their application to the particular industry under consideration and to the particular markets within which the industry operates. 488 The general approach of the antitrust laws towards a merger or consolidation of the sort that currently requires preapproval under the BHCA is to accept the industry in its existing form as the norm and then to establish the effects of the merger or acquisition in terms of its effects on that norm. The net effect is the antitrust laws' disposition in favor of the existing structure.

The Justice Department has the power under existing law to challenge banking mergers and acquisitions for violation of the antitrust laws even when the Fed has first found the BHCA's antitrust tests satisfied. 48 9 For example, in December 1990, the Justice Department challenged the acquisition of First Interstate of Hawaii, Inc. by First Hawaiian, Inc. under the BHCA even though the Fed had approved the transaction. The suit was settled by the agreement of the parties to a divestiture plan proposed by the Justice Department.490 InJuly 1991, theJustice Department challenged an acquisition by Fleet/Norstar of assets from the FDIC after the transaction was approved by the Fed under the Bank Merger Act.49 1 As these two cases show, the Justice Department has sufficient regulatory authority to police the antitrust aspects of bank acquisitions effectively without the BHCA statutory protections.

2. Federal Trade Commission Act

Secondary to the core antitrust laws, and of more potential than experiential significance in regulating bank holding company behavior in the absence of the BHCA, is the Federal Trade Commission Act (FTC Act). 49 2 In its broad scope the FTC Act is inapplicable to banks. 493 The FTC, however, may require banks to produce documentary evidence required during agency investigations. 494 The FTC Act's basic function is the prevention of precisely the type of activity that banks and their nonbank affiliates were accused of in the initial drafting of and amendments to the BHCA49 5-the perpetration of "unfair methods of competition. "496

### 2NC---AT: Rollback

#### Guidance uniquely avoids rollback---it’s not judicially reviewable because it’s not legally binding---guidance is neither ripe nor final.

Kessler 21 (Jeremy Kessler, Professor of Law at Columbia University; Charles Sabel, Maurice T. Moore Professor of Law at Columbia University; “The Uncertain Future of Administrative Law;” 08-01-21, Daedalus, Vol. 150, Issue 3, pp. 188-207, <https://doi.org/10.1162/daed_a_01867>, TM)

Yet government-by-guidance has provoked significant legal controversy, for at least three related reasons.18 First, as notice-and-comment rulemaking became accepted as the paradigmatic mode of administrative rulemaking, the less procedurally onerous issuance of guidance began to strike some scholars, litigants, and judges as a potential cheat. As Justice Elena Kagan put it during an oral argument in 2015, this is the recurrent concern that “agencies more and more are using interpretive rules and are using guidance documents to make law and that … it is essentially an end run around the notice and comment provisions.”19 A second, related fear is that because the provisionality of guidance documents makes them difficult to challenge in court, agencies can use guidance to evade not only the pre-issuance notice-and-comment process but also post-issuance judicial review as well.20 A final concern relates to the proliferation of doctrinal deference to agencies' interpretation of their statutory mandates and prior regulations. Critics warn that such deference perversely shelters agency interpretations announced in guidance documents from judicial scrutiny, even though they do not reflect the deliberation and evidence-gathering required by the notice-and-comment process or by formal agency adjudication.21

Underlying these technical legal objections are deeper normative concerns about the relationship of regulation as “current thinking” to conventional forms of legal authority–legislative, executive, and judicial–that help to explain why guidance continues to bedevil American courts and legal commentators. Guidance, unlike notice-and-comment rules, cannot be seen as analogous to and directly descended from legislation as a natural outgrowth of the constitutional order. But neither does guidance have the finality that marks the culmination of lawful executive or judicial action. Unlike prosecutorial indictments and administrative enforcement actions, it does not purport to represent the executive branch's determination that a particular private party has violated the law; unlike administrative orders and judicial decisions, it is not an assessment of the guilt or liability of an accused party. Guidance is always ripening into a conclusive decision, but it is never ripe; for this reason, unlike administrative rules and orders, it is not reviewable by the courts as a matter of course.

#### Even if it gets challenged, agencies will win on ripeness and finality grounds.

Raso ’10 CONNOR N. RASO – J.D., Yale Law School expected 2oo; Ph.D., Stanford University Department of Political Science expected 2010 - “Strategic or Sincere? Analyzing Agency Use of Guidance Documents” – Yale Law Journal – v. 119:782 - #E&F - https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5196&context=ylj

5. Judicial Challenge

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

#### Their cards are about deference for determining ‘unfair methods of competition,’ an interpretation of the counterplan could be an ‘unfair trade act,’ which is also under Section 5 of the FTCA.

Bush 16 (Darren Bush, Professor of Law, University of Houston Law Center; “Out of the DOJ Ashes Rises the FTC Phoenix: How to Enhance Antitrust Enforcement by Eliminating an Antitrust Enforcement Agency;” Fall 2016, Willamette Law Review, Vol. 33, Issue 1, Accessed through HeinOnline, TM)

B. FTC Receives Little Deference in Court

The FTC receives almost no deference with respect to cases it brings under the "unfair methods of competition" prong of the Federal Trade Commission Act. In contrast, the FTC usually receives Chevron deference 57 when it acts under the "unfair or deceptive trade acts or practices" prong of section 5 of the FTC Act. Theories abound as to why this is so.

The most obvious theory is that the dual enforcement scheme clouds the ability of the courts to offer the FTC any deference. Unlike with the FTC's "unfair methods of competition" actions, the courts do not face a non-agency duplicate that appears in the bulk of cases before the courts regarding "unfair or deceptive trade acts or practices."5 The FTC and DOJ both enforce the Clayton Act, and while the Sherman Act is exclusively within the confines of the DOJ, the FTC cases, to the courts, are parallel actions. 59 With an "ugly stepsister" in the midst, it is difficult for the FTC to make a claim of deference successfully. 60

### 2NC---AT: Clarity

#### 5. Case-by-case is more unclear than Section 5.

Khan ’20 et al; At the time of this writing, Lina Khan was an Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; and former Legal Fellow, Federal Trade Commission. Now, Lina Khan serves as the head of the FTC. The co-author for this piece is Rohit Chopra, who was previously The Assistant Director of the Consumer Financial Protection Bureau and currently sits on the FTC. “The Case for “Unfair Methods of Competition” Rulemaking”, 87 U. CHI. L. REV. 357, 359-63 - #E&F – 2020 - https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/ChopraKhan\_Rulemaking\_87UCLR357.pdf

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process.

One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the “rule of reason” standard. The “rule of reason” involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for “speculative, possibly labyrinthine, and unnecessary” analysis and appears to exceed the abilities of even the most capable institutional actors.1 Generalist judges struggle to identify anticompetitive behavior2 and to apply complex economic criteria in consistent ways.3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer.4 And if a standard isn’t administrable, it won’t yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms into their business decisions.5 Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process—a fundamental principle in our legal system.6

Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication “may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of businessmen, the private bar, and the government agencies.”7 Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades.8

#### 6. It’s more certain than the ambiguous language in the status quo.

Emerson 21 (Blake Emerson, Assistant Professor of Law @ UCLA Law School; “Liberty and Democracy Through the Administrative State: A Critique of the Roberts Court’s Political Theory;” Public Law Research Paper, 02-05-21 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3779457>, TM)

Similar dynamics are common beneath the level of regulations, when agencies issue nonbinding guidance to private parties concerning how to comply with the law. Critics of guidance complain that these documents often impose “coercive” requirements while avoiding the rigors of informal rulemaking or formal adjudication.280 But in contexts where an agency has broad enforcement power, or the capacity to keep products off the market altogether, regulated parties crave guidance like “water in the desert.”281 Even if the terms of the guidance departs from the regulated parties’ ideal-point in preserving their discretion, the gains in certainty make such non-binding yet coercive communications well worth the cost.

#### 7. Setting Section 5 guidelines for “unfair competition” boosts clarity and refines FTC legal standards.

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

FTC Commissioners Joshua Wright and Maureen Ohlhausen have proposed that the Commission adopt Guidelines for the application of Section 5 to Unfair Methods of Competition (“UMC”).2 These UMC Guidelines would apply to non-merger conduct that may not violate the Sherman Act. Agency Guidelines can provide a useful role in defining the scope of agency enforcement intentions and providing guidance to the business community, outside counsel, and agency staff.3 They also can lead to more refined legal standards. This short note will comment on the role of Section 5 distinct from the Sherman Act and how this relates to the Commissioners’ proposed Guidelines.

## CP---CFPB

### 2NC---Condo---Short

## Adv---Localization

### 2NC---UQ

#### Prefer our ev --- (1) They didn’t read any uniqueness cards and (2) Ours is based on comprehensive models AND assumes market entry for ONLINE startups --- which is the MOST data demanding

Djankov & Zhang 21 --- Simeon Djankov, Policy Director, Financial Markets Group, London School of Economics, Eva (Yiwen) Zhang, Researcher, Peterson Institute for International Economics, “US business dynamism rises”, VOXEU, 03 March 2021, https://voxeu.org/article/us-business-dynamism-rises

Data on new company applications in the US since 2004, when these data first became available, show a blip in startups in 2010, following the euro area crisis, and a large spike in 2020. To study the patterns of new entry, we employ data on firm births, which record the month businesses start paying payroll taxes since 1978 (Figure 1). We show that firm birth generally accelerates in the aftermath of economic crises. This pattern is particularly pronounced in 2020 and after the second oil shock (1984).

Note: Business application data are gathered by the US Census Bureau’s Business Formation Statistics.

The measure documents new business formations as indicated by applications for an Employer Identification Number (EIN). Firm birth data are gathered by US Census Bureau’s Business Dynamic Statistics. The measure documents firm birth as indicated by the report of first positive employment based on payroll tax records. A firm’s birth year is the year an establishment belonging to the firm first reports positive employment in the week including March 12. In other words, “birth” is defined as going from zero March 12 employment in year t-1 to positive March 12 employment in year t. It is a lagging indicator as a firm that starts operations on, say, March 20 will appear as born only the following year. We take the data and calculated the year-on-year growth of business applications at US state level. The business formation and dynamics data follow similar growth patterns in the years they overlap (red line and blue line, respectively). The business dynamics data on firm birth lag behind the business application data. This is a meaningful difference: it takes time between applying to register the business and the actual start of operations (renting office space, hiring workers, complying with sector-specific requirements). As such, business applications are a leading indicator for subsequent business entry.

We next use a more comprehensive measure of business dynamism: net business entry, which is the number of firm births minus firm deaths. Firm deaths are difficult to measure contemporaneously and official statistics are released with significant lags. For example, the US Census’s Business Dynamic Statistics (BDS) data on firm deaths in 2020 will be public only in 2023. We hence approximate firm deaths from 2018 April to 2021 March (matching the BDS time series) using the historical correlation between firm exit rates (using BDS firm deaths as a share of total firms) and the annual changes in the unemployment rate (March-over-March).1 Crane et al. (2020) pioneered this estimation approach to examine the patterns of business closure; similarly, Greenwood et al. (2020) forecast business bankruptcy filings based on unemployment rates. We also estimate firm births beyond March 2018 using the annual growth of high-propensity business applications, matched to correspond with the BDS annual time series (April to March).

Net business entry is rising too (Figure 2). US firm births are estimated to surpass firm deaths in 2020, unlike in the aftermath of the previous financial crisis.

Note: Pre-2018 data are retrieved from BDS. 2018-2020 data are based on the authors’ estimates. Firm deaths and births correspond to the period between April of the year shown on X-axis to March of the following year. This exercise is done to match the BDS data timing. For example, 2018 data corresponds to firm births and deaths estimated for April 2018 to March 2019. Data for 2020 (April 2020 –March 2021) are annualized with April – December 2020 data.

Composition of startup activity

In 2020, business applications in the construction, real estate, and accommodation and food service sectors were hit the most during the stay-at-home period in the US, and they did not recover to their pre-crisis flow until June (Figure 3, top panel). Business applications in retail were also hampered by the pandemic at first, but started to pick up as early as mid-April. In fact, retail startups saw the largest rebound among all sectors, and they continued to drive the expansion of US entrepreneurship in the second half of 2020. In this sector, the rebound is due to online (non-store) retail startups (Figure 3, bottom panel).

### 2NC---AT: Tech Leadership

#### China lags in digital tech.

Jun ’18 [Jun; August 3; dean of the School of Economics at Fudan University and director of the China Center for Economic Studies; Nikkei Asia, “The West exaggerates China's technological progress,” https://asia.nikkei.com/Opinion/The-West-exaggerates-China-s-technological-progress]

This is a serious misrepresentation. While it is true that digital technologies are transforming China's economy, this reflects the implementation of mobile-Internet-enabled business models more than the development of cutting-edge technologies, and it affects consumption patterns more than, say, manufacturing. This kind of transformation is hardly unique to China, though it is occurring particularly rapidly here, thanks to a huge consumer market and weak financial regulation.

Furthermore, it is not so obvious that these changes have anything to do with the government's industrial policies. On the contrary, the growth of China's internet economy has been driven largely by the entrepreneurship of privately owned companies like Alibaba and Tencent.

In fact, Western observers -- not just the media, but also academics and government leaders, including U.S. President Donald Trump -- have fundamentally misunderstood the nature and exaggerated the role of China's policies for developing strategic and high-tech industries. Contrary to popular belief, these policies do little more than help lower the entry cost for firms and enhance competition. In fact, such policies encourage excessive entry, and the resulting competition and lack of protection for existing firms have been constantly criticized in China. Therefore, to the extent that China relies on effective industrial policies, they do not create much unfairness in terms of global rules.

Having said that, what are China's actual technological prospects? The Chinese are certainly fast learners. Over the last 30 years, Chinese manufacturers have proved adept at seizing opportunities to emulate, adapt and diffuse new technologies.

But technological advances in the Chinese business sector occur at the middle of the smile curve (where gains are generally lower than at the innovative start of a new product or at the end, in marketing finished goods to consumers).

Foreign core-technology owners extract most of the added value from Chinese manufacturing. For example, in Danyang, a county of Jiangsu Province that is a production hub of optical lenses for global markets, manufacturers can produce the most sophisticated models. Yet they lack the core software to produce, say, progressive lenses, so they must pay a fixed royalty to a U.S. company for each progressive lens they make. Likewise, China's automobile manufacturers still import their assembly lines from developed countries.

Clearly, there is a big difference between applying digital technologies to consumer-oriented business models and becoming a world leader in developing and producing hard technology. The latter goal will demand sustained investment of time, human capital, and financial resources in sectors with long basic R&D cycles (such as pharmaceuticals).

Given this, China probably remains 15-20 years away from matching the R&D input of, say, Japan or South Korea, and when it comes to output -- the more important factor -- it is much further behind. While China can accelerate progress by attracting creative talent and strengthening incentives for long-term research, there are no real shortcuts when it comes to achieving the gradual shift from learning to innovating.

### 2NC---AT: Warming

#### No climate impact---bad studies and adaption.

Nils P. Gleditsch 21, Research Professor at the Peace Research Institute Oslo, “This time is different! Or is it? NeoMalthusians and environmental optimists in the age of climate change,” Journal of Peace Research, pg. 5-6, 2021, SAGE. clarification denoted with brackets.

The most extreme contrarian position is, of course, to deny one or both key conclusions of the IPCC: the reality of global warming or the human contribution to it. However, most environmental optimists accept these two key conclusions but raise other problems with the panel’s discussion of the social effects of climate change and even more so with popular interpretations of the panel reports. For instance, Hausfather & Peters (2020), by no means ‘climate deniers’, decry the common use of choosing the high-risk [scenario] RCP8.59 to illustrate ‘business as usual’ as misleading.

The causal chains from climate change to the proposed effects on human beings are long and complex, and the uncertainty increases every step of the way. In the literature on the social effects of climate change, including the IPCC reports, statements abound that something ‘may’ lead to something else, or that a variable ‘is sensitive to’ another, without any guidelines for how to translate this into probabilities (Gleditsch & Nordås, 2014: 87f). Uncritical use of the precautionary principle, where any remotely possible calamity unwittingly becomes a probable event, is not helpful.

Gleditsch & Nordås (2014: 85) note that while AR5 (IPCC, 2014) did not find strong evidence for a direct link between climate change and conflict, it argued that climate change is likely to impact known conflict-inducing factors like poverty and inconsistent political institutions and therefore might have an indirect effect on conflict. But this assumes that correlations are transitive, which is not generally the case. If A correlates with B and B with C, we know nothing about how A relates to C unless both correlations are extremely high. The strongest case for the climate–conflict link is the effect of interaction between climate change and factors like poverty, state failure, or ethnic polarization. It may be more cost-effective to try to deal with these other risk factors than with global warming itself if the goal is to reduce the ‘risk multiplier’ effect of climate change on armed conflict.

The articles in this special issue do not generally see scarcity by itself as necessarily resulting in strongly negative outcomes. Factors like development, state failure, and previous overload on ecosystems continue to play an important role in that they interact with climate change to produce conflict and other social outcomes. For instance, Ide, Kristensen & Bartusevicˆius (2021) conclude that the impact of floods on political conflict are contingent on other factors such as population size and regime type. Moreover, most of the articles do not assume that scarcities are likely to arise at the global level. They may be regional (mostly in Africa), national, or local. Urban and rural areas may be affected by different scarcities. Climate change may also affect particularly strongly groups that are already at an economic or political disadvantage. The effects can be alleviated and adaptations constructed at these levels.

The argument about how climate change may indirectly impact conflict leans heavily on the negative economic consequences of climate change, but with little or no reference to the research that explicitly deals with this topic. In fact, the relevant chapter in AR5 concluded that for most sectors of the economy, the impact of climate change was likely to be dwarfed by other factors. Tol (2018) finds that the long-term global economic effects are likely to be negative, but that a century of climate change will have about the same impact on the economy as the loss of one year of economic growth. Other economists are more cautious, but the dean of climate change economics, William Nordhaus (2018: 345, 359), estimates that ‘damages are 2.1 percent of global income at 3C warming and 8.5 percent of income at 6C’, while also warning that the longer the delay in taking decisive action, the harsher the necessary countermeasures. Stern (2006) is more pessimistic, based mainly on a lower discount rate (the interest rate used to calculate the present value of future cash flows) as are Wagner & Weitzman (2015). Heal (2017) argues that the Integrated Assessment Models generally used in the assessment of the economics of climate change are not accurate enough to provide quantitative insights and should not be taken as serious forecasts. Yet, all these economists take the basically optimistic view that climate change is manageable with appropriate policies for raising the price on the emission of greenhouse gases. With a chapter heading from Wagner & Weitzman (2015: 17): ‘We can do this’.

This more optimistic assessment of climate change does not assume that the challenge will go away by itself or can be left to the market. A plausible approach, favored by most economists,10 is the imposition of a robust and increasing price on carbon emissions (whether as a carbon tax or through a cap and trade scheme) high enough to reduce the use of fossil fuels and encourage the search for their replacement. More than 25 countries had such taxes by early 2018 (Metcalf, 2019), but generally not at a level seen as necessary for limiting global warming to, say, 2C. This approach relies on the use of the market mechanism, but with targets fixed by public policy. Income from a carbon tax can be channeled back to the citizens to avoid increasing overall taxation. To speed up the transition, funds can also be allocated to the research and development of cheaper and more efficient production of various forms of fossil-free energy, including nuclear power (Goldstein & Qvist, 2019).

The response of the environmental optimists continues to emphasize the role of innovations; technological innovations, such as improvements in battery technology, the key element in the 2019 Nobel Prize in chemistry,11 but also social innovations, as exemplified by the experimental approach to the alleviation of poverty, rewarded in the same year by the Nobel Prize in economics.12

While the most important countermeasures will be directed at the mitigation of climate change, there is also a strong case for adaptation. If sea-level rise cannot be totally prevented, dikes and flood barriers will be cost-effective and necessary, at least in high-value urban areas. If parts of Africa suffer from drought, there will be increased use for new crops that are more suitable for a dry climate, possibly developed in part by GMO technology. Industrialization in Africa can decrease the one-sided reliance on rain-fed agriculture, as it has in other parts of the world, which have moved human resources from the primary sector to industry (and then to services). Continuing urbanization will move millions out of the most vulnerable communities (Collier, 2010). While structural change failed to produce economic growth in Latin America and Africa after 1990, Africa has experienced a turnaround in the new millennium (McMillan & Rodrik, 2014) and there are also potentials for increasing productivity by structural change within agriculture in Africa (McCullough, 2017).

## Adv---Investment

### 2NC---AT: Econ

#### Econ’s resilient

Palha 17 – Sol Palha, Head Financial Analyst at Tactical Investor, Writer at The Street, Contributor at Huffington Post, Master’s Degree in Psychology from Columbia University, Lecturer at Pasiad International, “Is A Spectacular Stock Market Crash Just Around the Corner?”, 2017, http://www.huffingtonpost.com/entry/is-a-spectacular-stock-market-crash-just-around-the\_us\_599dbd8fe4b056057bddd035

The stock market crash story is getting boring and annoying to a large degree. Since 2009, there has been a constant drumbeat of the market is going to crash stories. In 2009, many experts felt that the market had rallied too strongly and that it needed to pull back sharply before moving higher up. They were calling for 15%-20% correction. Ten years later and most of them are still waiting for this so-called crash. A stock market crash is a possibility but the possibility is not the same thing as certainty, and this is what seems to elude most of the naysayers. One day they will get it right as even a broken clock is correct twice a day. In the interim waiting for this stock market crash has cost these experts a fortune, both in lost capital gains and actual booked losses if they shorted this market.

It’s 2017, and the markets are overbought, and we agree that they need to let out some steam, but as for a crash that will only occur when sentiment turns bullish. The crowd has not embraced this market and until they do corrections but not crashes is what we should expect. In fact, we penned an article titled “Dow Could Trade to 30K But not before This Happens”, where we discussed the possibility of the Dow trading to 30k before it crashes. The one factor that could alter this outlook would be for the masses to turn bullish suddenly.

This market will experience a spectacular crash one day; nothing can trend upwards forever and eventually the market has to revert to the mean. Markets never crash on a sour note; the crowd is chanting in joy when the markets suddenly change direction. A simple look at previous bubbles will prove this; the housing bubble, for example, did not end on a note of fear; the crowd was ecstatic. Even the Tulip bubble that lasted from 1634-1637 ended on a note of extreme joy.

Jim Rogers states that the next crash will be the worst one we have seen in our lifetimes.

We’ve had financial problems in America — let’s use America — every four to seven years, since the beginning of the republic. Well, it’s been over eight since the last one. This is the longest or second-longest in recorded history, so it’s coming. And the next time it comes — you know, in 2008, we had a problem because of debt. Henry, the debt now, that debt is nothing compared to what’s happening now.

In 2008, the Chinese had a lot of money saved for a rainy day. It started raining. They started spending the money. Now even the Chinese have debt, and the debt is much higher. The federal reserves, the central bank in America, the balance sheet is up over five times since 2008. It’s going to be the worst in your lifetime — my lifetime too. Be worried Business Insider

In a broad manner of speaking, he is right, but the proverbial question as always is “when”; so far the naysayers have missed the mark by 1000 miles. This entire rally has been based on the fact that the Fed artificially propped the markets by keeping rates low for an insanely long period and infusing billions of dollars into the markets. One day the pied piper is going to collect but as we have stated over and over again over the years, that until the masses embrace this market, a crash is unlikely. A strong correction is, however, a certainty; it’s just a matter of time.

The market has defied every call, and even some of the most ardent of bulls are now nervous; we stated this would occur over two years ago. The Market has put in over 36 new highs this year and is living up to the new name we gave it late in 2016. Up to that point, we referred to this market as the most hated bull market of all time; after that, we started to refer to this market as the most Insane Stock Market Bull of all time. Insanity by definition has no pattern so expect this market to do things no other market has ever done before.

The markets will crash one day but these so-called experts have no idea of this event will occur

#### Econ’s resilient – shocks don’t spill over

Posen, 16 – Adam S. Posen, president of the Peterson Institute for International Economics and external voting member of the Bank of England’s rate-setting Monetary Policy Committee, “Chapter 1: Why We Need a Reality Check”, REALITY CHECK FOR THE GLOBAL ECONOMY, Peterson Institute for International Economics, PIIE Briefing 16-3, March 2016

A combination of public policies and decentralized private-sector responses to the crisis have increased our economic resilience, diminished the systemic spillovers between economies, and even created some room for additional stimulus if needed. Large parts of the global financial system are better capitalized, monitored, and frankly more risk averse than they were a decade ago, with less leverage. The riskier parts of today’s global economy are less directly linked to the center’s growth and financing than when the troubles were within the United States and most of Europe in 2008. Trade imbalances of many key economies are smaller, though growing, and thus accumulations of foreign debt vulnerabilities are also smaller than a decade ago. Most central banks are now so committed to stabilization that they are attacked for being too loose or supportive of markets, making them at least unlikely to repeat some policy errors from 2007–10 of delaying loosening or even excessive tightening. Finally, corporate and household balance sheets are far more solid in the US and some other major economies than they were a decade ago (though not universally), and even in China the perceptions of balance sheet weakness exceed the reality in scope and scale.

#### Their impacts are epistemologically faulty and exaggerated – durability of macro-economic trends, empirical examples of the policy/economic disconnect, offset uncertainty for households/businesses, and faith in intervening actors

SEB 17 ---- Skandinaviska Enskilda Banken Group, “Global Economy Resilient to New Political Challenges,” 2/22, https://sebgroup.com/press/news/global-economy-resilient-to-new-political-challenges

The interplay between economics and politics was undoubtedly a dominant feature of analyses during 2016. As we know, it was difficult to foresee both election results and their economic consequences. It was certainly not strange that economists were unable to predict the Brexit referendum outcome or Donald Trump’s victory, when public opinion polling organisations and betting firms failed to do so, but lessons might be learned from the economic assessment impacts they made. Economists probably tend to exaggerate the importance of more general political phenomena. While in the midst of elections that appear historically important, it is tempting to present alarmist projections about election outcomes that seem improbable and/or unpleasant. But once the initial shock effect has faded, more ordinary economic data such as corporate reports and macroeconomic figures take the upper hand.

Psychological effects often exaggerated

One important observation is that it is difficult to find any historical correlation between heightened security policy tensions and economic activity. Households and businesses do not seem to be especially sensitive in their consumption or capital spending behaviour. This is perhaps because uncertainty is offset by investments in a defence build-up, for example. Only when the conditions that directly determine profitability and investments are affected, for example via rising oil prices or poorly functioning financial markets, will the effects become clear.

Markets also seem to have a general tendency to assume that the economic policy makers can actually behave rationally in crisis situations, until this has been disproved. Both during the US sub-prime mortgage crisis of 2007-2008 and the euro zone's existential crisis a few years later, for a rather long time the market maintained its faith that a response would come. Not until after a lengthy period of inept actions by decision makers did these crises become genuinely acute, with large secondary effects as a consequence. This market "patience" is presumably based on a long-time pattern of recurring bailout measures by governments and central banks, which usually benefit risk-taking at the expense of caution or speculation that policy responses will not materialise.

### 2NC---AT: LIO

#### **LIO thumped** – can’t overcome internal or external antidemocratic forces, the aff’s impact on the LIO is unpredictable and insufficient

Cooley 22 (ALEXANDER COOLEY is Director of Columbia University’s Harriman Institute and Claire Tow Professor of Political Science at Barnard College, DANIEL H. NEXON is a Professor in the Department of Government and at the Walsh School of Foreign Service at Georgetown University, foreign affairs, January/February 2022, “The Real Crisis of Global Order” <https://www.foreignaffairs.com/articles/world/2021-12-14/illiberalism-real-crisis-global-order>) MULCH

Key players in the established democracies, especially in Europe and North America, assumed that reducing international barriers would facilitate the spread of liberal movements and values. It did for a time, but the resulting international order now favors a diverse array of illiberal forces, including authoritarian states, such as China, that reject liberal democracy wholesale, as well as reactionary populists and conservative authoritarians who position themselves as protectors of so-called traditional values and national culture as they gradually subvert democratic institutions and the rule of law. In the eyes of many right-wing Americans and their overseas counterparts, Western illiberalism looks perfectly democratic.

Soon after his inauguration, U.S. President Joe Biden began talking about “a battle between the utility of democracies in the twenty-first century and autocracies.” In doing so, he echoed a widespread view that democratic liberalism faces threats from both within and without. Authoritarian powers and illiberal democracies are seeking to undermine key aspects of the liberal international order. And the supposed pillars of that order, most notably the United States, are in danger of succumbing to illiberalism at home.

Whether they want to “build back better” or “make America great again,” every American analyst seems to agree that the United States needs to first sort itself out to effectively compete with authoritarian great powers and advance the cause of democracy on the global stage. But the two major political parties have very different understandings of what this project of renewal entails. This schism is far greater than disputes over economic regulation and public investment. Partisans see the other side as an existential threat to the very survival of the United States as a democratic republic.

The United States is one of the more polarized Western democracies, but its political conflicts and tensions are manifestations of broader, international processes. The U.S. reactionary right, for example, is linked to a variety of global networks that include both opposition political movements and governing regimes. Efforts to shore up liberal democracy in the United States will have cascading and sometimes unpredictable effects on the broader liberal order; at the same time, policymakers cannot set the country’s affairs in order without tackling wider international and transnational challenges.

All of this goes way beyond giving American democracy a fresh coat of paint and remodeling its kitchen. The crisis cannot be addressed by simply recommitting the United States to multilateral institutions, treaties, and alliances. Its roots are structural. The nature of the contemporary liberal international order leaves democracies particularly vulnerable to both internal and external illiberal pressures.

In their current form, liberal institutions cannot stem the rising illiberal tide; governments have struggled to prevent the diffusion of antidemocratic ideologies and tactics, both homegrown and imported. Liberal democracies must adapt to fend off threats on multiple levels. But there is a catch. Any attempt to grapple with this crisis will require policy decisions that are clearly illiberal or necessitate a new version of liberal order.

OPEN FOR INSTABILITY

Critics of the notion of a new cold war between China and the United States highlight fundamental differences between the world of today and that of the early decades of the Cold War. The Soviet Union and the United States formed the centers of discrete geopolitical blocs. By contrast, Beijing and Washington operate in overlapping and interconnected geopolitical spaces. For years, politicians in Washington have debated how many restrictions to place on Chinese investment in the United States. There was no such angst, and no need for it, when it came to the Soviet Union. U.S. companies did not outsource production to Soviet factories; the Soviet Union was never a significant supplier of finished goods to the United States or its key treaty allies.

A wide range of developments—all of which accelerated over the last three decades—have made the world denser with flows of knowledge and commerce, including the expansion of markets, economic deregulation, the easy mobility of capital, satellite communications, and digital media. People are more aware of what is happening in different parts of the world; formal and informal transnational political networks—limited during the Cold War by hard geopolitical borders and fewer, costlier forms of long-distance communication—have grown in both importance and reach.

These unfolding changes jumbled the geopolitical landscape that emerged after the implosion of the Soviet Union. No single, uniform international order replaced the more bifurcated international order of the Cold War; the world, despite the hopes of neoliberal politicians, never became “flat.” Instead, the international order that took shape by the turn of the century was highly variegated. Many of the new democratic regimes that appeared in the 1990s were only tenuously democratic; optimists wrongly dismissed early indications of weak liberal democratic institutions as but bumps on the road to full democratization. Eastward across Eurasia, liberal ordering became increasingly patchwork. Some states, such as China, managed to effectively access the benefits of the liberal economic order without accepting the requirements of political liberalism.

Liberal institutions cannot stem the rising illiberal tide.

Many analysts in those years promised that market expansion would produce robust middle classes that would in turn demand political liberalization. They argued that the development of a global civil society—underpinned by human rights, the rule of law, and environmental nongovernmental organizations (NGOs)—would help cultivate and mobilize pro-democracy forces, especially in the post-Soviet space. The Internet, widely imagined as an unstoppable force for freedom, would do its part to spread the irresistible appeal of both liberal economic principles and liberal political freedoms.

One could still make a case for optimism even after 2005, the last year that had a net increase in global democracy, according to the pro-democracy advocacy group Freedom House. But in retrospect, it seems hopelessly naive.

**Or it’s resilient.**

**Ikenberry ’18** [John; June 28; Professor of International Relations at Princeton University; Ethics & International Affairs, “Why the Liberal World Order Will Survive,” vol. 32, no. 1]

Self-Reinforcing Characteristics of Liberal International Order

The United States has **dominated** the post-war **international order**. It is an order built on **asymmetries of power**; it is hierarchical. But it is **not** an **imperial system**. It is a **complex** and **multilayered** political formation with **liberal characteristics**— openness and **rules-based** principles—that generate incentives and opportunities for other states to **join** and **operate within** it.

Four characteristics reinforce and draw states into the order. First, it has **integrative tendencies**. Over the last century states with **diverse characteristics** have found pathways into its “**ecosystem**” of rules and institutions. Germany and Japan found roles and positions of authority in the post-war order; and after the cold war **many more states**—in **Eastern Europe**, **Asia**, and elsewhere—have joined its **economic** and **security partnerships**. It is the **multilateral logic** of the order that makes it relatively **easy** for states to **join** and rise up within the order. Second, the liberal order offers opportunities for leadership and **shared authority**. One state does not “**rule**” the system. The system is built around **institutions**, and this provides opportunities for shifting and expanding **coalitions** of states to **share leadership**. Formal institutions, such as the IMF and World Bank, are led by boards of directors and weighted voting. Informal groups, such as the G-7 and G-20, are built on principles of **collective governance**. Third, the actual **economic gains** from participation within the liberal order are **widely shared**. In colonial and informal imperial systems, the gains from trade and investment are disproportionately enjoyed by the lead state. In the existing order, the “profits of modernity” are distributed across the system. Indeed, China’s great economic ascent was **only possible** because the liberal international order **rewarded** its pursuit of **openness** and **trade-oriented** growth. For the same reason, states in **all regions** of the world have made **systematic efforts** to integrate into the system. Finally, the liberal international order accommodates a **diversity** of models and strategies of growth and development. In recent decades the Anglo-American model of neoliberalism has been particularly salient. But the post-war system also **provides space** for other capitalist models, such as those associated with European social democracy and East Asian developmental statism. The global capitalist system might generate some pressures for **convergence**, but it also provides space for the **coexistence** of alternative models and ideologies.

These aspects of the liberal international order create **incentives** and **opportunities** for states to **integrate** into its core economic and political realms. The order allows states to **share** in its economic spoils. Its **pluralistic** character creates possibilities for states to “**work the system**”—to join in, **negotiate**, and **maneuver** in ways that **advance their interests**. This, in turn, creates an order with **expanding constituencies** that **have a stake** in its continuation. Compared to imperial and colonial orders of the past, the existing order is **easy to join** and **hard to overturn**.

## Adv---Rural Development

### 2NC---AT: I/L---Foreign Policy

### 2NC---AT: Populism

#### Culture war, NOT political economy, is the cause

Margalit 19 – Professor of Political Science at Tel Aviv University. Yotam Maraglit, December 20 2019, “Economic causes of populism: Important, marginally important, or important on the margin,” Vox EU, https://voxeu.org/article/economic-causes-populism

I contend that the economic-centric accounts, even in their more nuanced versions, tend to overstate the role of economic insecurity as an explanation of populism's electoral success. In a recent article (Margalit 2019) I discuss several reasons why the focus on economic causes deserves more critical assessment, but here I shall mention two.

First, the claim that economic insecurity is important in understanding the electoral success of populism conflates what I define as ‘outcome significance’ and ‘explanatory significance’. Consider the Brexit vote, which was decided by a margin of less than four percentage points. Economic insecurity and displacement caused by globalisation may well have shifted the vote by a few points, enough to tip the referendum in favour of the ‘Leave’ camp. The outcome significance – transforming loss to victory – was therefore high. However, the overall phenomenon to be explained is why 52% of the electorate voted to leave the EU. The swing of a few percentage points hardly amounts to ‘explaining’ the phenomenon of the overall electoral backing for Brexit. Put differently, the explanatory significance of that factor is low.

The broader point this example illustrates is that a certain factor can have major consequences for the phenomenon of interest, without being a major explanation for that phenomenon. Yet this distinction seems to get muddled in the debate over populism’s causes. This can also be seen with other examples commonly used to demonstrate the importance of economic factors in shaping the populist vote.

In explaining Donald Trump’s electoral victory in 2016, analysts have often cited his alleged appeal to globalisation’s losers, helping him crack the Democrats’ ‘blue wall’ in Pennsylvania, Wisconsin, and Michigan. Analysis by Autor et al. (2016) gives credence to this argument in terms of outcome significance, by finding that the adverse effects of the massive import shock from China accounted for a vote share of several percentage points, sizable enough to flip these states in favour of Trump. Their estimates indicate that if the import shock had been half of what it was, the margin in favour of the Republicans in Pennsylvania would have shrunk by 1.7 percentage points and the Democrats would have won the state by 0.5%. Likewise, the simulation indicates that the electoral impact would also have been sizable enough in Wisconsin and Michigan (2.2 and 1.8 points, respectively) to overturn the Electoral College results. It may therefore be correct that, without the impact of the China shock, Trump would have lost.

But the magnitudes of the estimated effects indicate that we are dealing with fairly small additions to a much larger electoral phenomenon. Examination of the empirical evidence regarding an array of other European countries reveals a similar pattern: shocks that increase the economic insecurity of voters affect the electoral outcome on the margin, yet the overall explanatory significance for the level of support for populists is modest (e.g. Colantone and Stanig 2018a, 2018b, Dippel et al. 2015, Malgouyres 2017). In some instances, this effect is consequential in differentiating between loss and victory, but that is not always the case. For example, in proportional representation systems, support for populists – particularly far right parties – affects the distribution of votes within the ideological bloc, but has little bearing on the overall division of votes between the competing blocs. In ‘first past the post’ systems, where districts often lean heavily towards one party, support for the populists is too small to meaningfully affect the vote.

Moreover, individual-level studies of the vote for populist parties consistently find that variables that capture labour market standing or economic insecurity explain only a small fraction of the variation of interest (Guiso et al 2017, Gidron and Hall 2017). While variables capturing these explanations are mostly statistically significant, one must not overlook the fact that their usefulness in accounting for the broader question of who supports the populists is, in fact, very limited.

A second issue with attributing a central role for the economic causes has to do with immigration, often the most salient issue for populist parties and voters. In describing immigration as an ‘economic cause’ of populism, there is a need to distinguish between two questions: Is immigration in itself economic-driven? And are the economic effects of immigration – whether real or perceived – a major cause of the populist vote? On the first question, there is ample evidence that, indeed, immigration to the West is largely instigated by economic forces (poverty, lack of jobs opportunities, wage differentials). But on the second question, the weight of the evidence clearly indicates that Western voters' concerns regarding immigration have little to do with its impact on their material standing or level of economic insecurity. This conclusion comes up in both observational studies and studies employing a range of survey-experimental methods including list, vignette, and conjoint designs (e.g. Sniderman 2004, Janus 2010, Bansak et al. 2017; see Haimmueller and Hopkins 2014 for a review of the evidence). Even when examining cases where the labour market threat posed by immigrants is most direct, the effects on natives' attitudes are very limited (Hainmueller et al. 2015, Malhotra et al. 2013). Thus, while immigration is often a major concern of populist voters, treating it as an economic driver of populism in this latter sense seems misguided.

What, then, explains the populist appeal? Out of space limit, I will note only that structural, long-term social changes strike me as central to understanding the resentment underlying much of its appeal. By this account, structural changes – such as increased access to higher education, urbanisation, and growing ethnic diversity – have led to significant progressive cultural shifts. These changes, and the perceived displacement of traditional social values, have caused a sense of resentment among segments of the population in the West, particularly among white men, older people, conservatives, and those with less formal qualifications (see Inglehart and Norris 2019 for an extensive exposition of this view). Increased exposure to foreign influences that comes with globalisation and, even more so, the effects of waves of immigration have exacerbated the sense of a cultural and demographic threat. With gradual generational change, these formerly predominant majorities have increasingly felt their social standing erode, buying into the populist nostalgia for a ‘golden age’ when there was cultural homogeneity and traditional values and a strong national identity prevailed. They have also grown receptive to populist charges against a disconnected elite that has turned its back on them and the values they hold dear.

There’s an obvious, and understandable, reluctance to accept such ‘soft’ explanations. Cultural explanations of populism can be harder to measure or identify causally. Yet that of course doesn’t mean that a cultural explanation is incorrect. One should be careful not to equate quantifiability with importance.

Note, though, that the cultural account does not dismiss the role of economic factors. In addition to the electoral impact of the causes noted earlier (e.g. trade, automation), hard economic times also tend to undermine the perceived competence of the economic and political elites, and thus help fuel popular distrust in them. It is therefore likely that the financial crisis contributed to the populist wave, as some have suggested (Algan et al. 2017, Mian et al. 2014). But given the weak empirical association between measures of economic insecurity and support for populism, we should view the crisis as more of a trigger than a root cause of widespread populist support.

#### Inequality doesn’t cause populism

Brian Nolan 19, Professor of Social Policy and Director, Equity Employment and Growth Research Programme, University of Oxford, 8/13/19, “Why we can’t just blame rising inequality for the growth of populism around the world,” https://theconversation.com/why-we-cant-just-blame-rising-inequality-for-the-growth-of-populism-around-the-world-120951

The idea is now commonplace that income inequality is inexorably on the rise. The US experience in particular has become central to a new grand narrative prominent in public debate and taken to apply across rich countries: globalisation and technological change have polarised society into a small elite with highly paid, secure jobs on one side, and on the other side are growing numbers of people, including an increasingly “squeezed” middle class, in insecure, poorly-paid work.

This growing inequality is held responsible for a wide range of social and political ills. Not least the erosion of solidarity, social trust and faith in democratic institutions. And, politically, it caused the election of Donald Trump, the UK’s Brexit vote, and the broad rise of populism seen as threatening democracy.

This “grand narrative” undoubtedly captures important aspects of the US experience. But it does not represent the whole picture. And as far as other rich countries are concerned, examining the evidence highlights the diversity of their experiences over recent decades. As I’ve found in my research, this story is more often than not a poor fit for various countries around the world.

Different experiences

Household surveys show that income inequality has risen significantly since the 1980s in about two-thirds of the rich countries of the OECD – leaving one-third where it has not. The following graph shows what has happened to the Gini coefficient, the most commonly-used indicator of income inequality. Inequality did not rise everywhere and, where it did, the scale of that increase varied widely. Countries such as the UK and Sweden did see inequality go up as sharply as the US. But for others the increase was often much more modest and even decreased for some.

Inequality rose decade by decade in the US, but the UK’s increase was mostly concentrated in the Thatcher years of the 1980s, Sweden’s in the 1990s, and these contained “episodes”, rather than continuous rises, are also common elsewhere. Tax data show pre-tax income shares at the very top increasing in many countries, but again this varies widely across countries.

When it comes to ordinary living standards, middle class income growth has been even more varied. The next chart shows that middle incomes have stagnated in purchasing power terms since the early 1980s in Japan and Italy, as well as the US, and grown only modestly in Germany. But these are the poorest performers.

The UK, for example, saw substantial income growth around the middle from the late 1980s up to the mid-2000s, in sharp contrast to its lack of growth since then. Countries such as Australia, Belgium, Canada, Denmark, Finland and Sweden also saw periods of quite strong growth.

Crucially, across rich countries the relationship between inequality and middle income growth is weak – throwing into question the link that gets made between the so-called squeezed middle and populism. Middle incomes have generally lagged behind growth in GDP per head but again to widely varying extents, and rising income inequality is only one factor. Knowing what happened to inequality in a given country would have been of little help in predicting whether growth in middle incomes was strong or weak.

Not just the economy

The extent to which rising inequality and stagnating living standards over decades have driven the recent rise in populism across the rich countries is also open to question. Yes, the white working class population whose livelihoods have been hurt through decades of manufacturing decline provided the core constituency supporting Trump for president. But economic dysfunction combines with cultural and demographic factors

in a way that makes them very hard to disentangle.

The fact that support for populist parties has risen in countries where inequality has been fairly stable over time (such as Austria and France), as well as ones where inequality has risen, and in countries where income growth has been quite robust (such as Poland), as well as ones where median incomes have stagnated (such as Hungary), illustrates the complexity of the factors at work.

#### No correlation

Mutz 18 --- Diana C. Mutz, Professor of Political Science and Communication Director, Institute for the Study of Citizens and Politics, “Status threat, not economic hardship, explains the 2016 presidential vote”, PNAS, May 8, 2018 115 (19), https://www.pnas.org/content/115/19/E4330

To what extent are these results convincing with respect to the lack of effects from personal economic hardship? Could Trump’s popularity be due to anticipated future financial difficulties rather than a referendum on what had already occurred? Cross-sectional analyses allowed me to examine the possibility that economic anxiety about the future was related to Trump support. Three questions explicitly asked respondents about their concern over (i) not having saved enough for retirement, (ii) not being able to pay medical bills, and (iii) not being able to pay for educational expenses. As shown in Table S4, whether using the sample as a whole or whites only, the results are the same. Concern about future expenses does not predict greater support for Trump. In addition, Trump supporters favor a smaller safety net, contradicting expectations that they are concerned about those facing economic hardship. Consistent with panel evidence, there is little support for the left behind thesis from the cross-sectional indicators of past economic hardship or anticipated hardship.

Perceived Status Threat.

Another limitation in the panel analyses is that I do not provide direct evidence that dominant groups feel threatened. Instead, I infer this from rising SDO and changing issue attitudes that suggest hunkering down in a protective manner. To address this shortcoming, the cross-sectional data illustrate how dominant group membership affected Trump support as well as whether those who reported that dominant groups were threatened were more likely to support Trump. Table S4 further confirms that whites and men were more likely to support Trump. More to the point, feeling that “the American way of life is threatened” is a consistent predictor of Trump support. In addition, respondents were asked to what extent various groups in America were discriminated against, including Christians, Muslims, men, women, whites, blacks, and Hispanics. If threat to dominant group status is an underlying cause of Trump support, the extent to which people perceive dominant social groups, such as men, Christians, and whites, as discriminated against more than lower status groups should predict support for Trump. Table S4 shows that perceived discrimination against high-status groups does indeed have a substantial impact on the likelihood of supporting Trump, even in a fully saturated model. Largely, the same individuals who perceive whites as more discriminated against than minorities also see Christians and men as experiencing greater discrimination than Muslims and women, despite the former groups’ dominant status. The status threat explanation is thus consistent with others’ interpretations emphasizing gender, race, and religion (3, 5). Furthermore, indicators that were present in both datasets, such as SDO, opinions on trade, and threat from China, produced similar results, adding confidence to this interpretation.

The Meaning of Education.

The cross-sectional survey replicates the strong relationship with education shown throughout the election. More importantly, it provides a better understanding of what precisely education represents. In Table S5, model 1, I replicate the strong relationship between lack of college education and Trump support using only demographics as predictors. In model 2, I examine what happens to education’s predictive power when measures of personal economic wellbeing are also included in the model. Finally, in model 3, I drop the economic variables and instead, include indicators corresponding to status threat toward dominant groups. As summarized in Fig. 3, regardless of which outcome measures I examined, including indicators of economic status did not eliminate the impact of education. It reduced education’s impact somewhat for the feeling thermometer measure, but for Trump/Clinton vote, the impact of education remained constant. However, after the relationship between Trump support and perceived status threat is taken into account, even lack of a college education no longer predicts Trump support for any of the measures. These findings strongly suggest that group-based status threat was the main reason that those without college educations were more supportive of Trump.

Status threat accounts for the impact of education on the 2016 presidential election. Note that bars represent the predictive strength of education on each of three different outcome measures after taking into account (i) demographics alone, (ii) demographics and economic predictors only, and (iii) demographics and threat indicators only. Details are in Table S5. \*\*\*P < 0.001.

Threats to Causal Inference

The overall consistency of these two sets of findings from two independent surveys lends strong support to the conclusion that the 2016 election was not about economic hardship. Instead, it was about dominant groups that felt threatened by change and a candidate who took advantage of that trend by positioning himself closer than his opponent to Americans’ positions on status threat-related issues.

Panel data utilizing within-person change over time are ideal for purposes of statistically identifying the relatively small changes that can change the outcome of American elections. Although model specification issues are much less problematic with this approach, it does not eliminate the possibility of confounding that is both unmeasured and time varying. In other words, if the impact of some variables is stronger at one point in time than another, model estimates can be biased. The consistent lack of significant interactions found between these independent variables and time diminishes this possibility, although it can never be completely eliminated.

Reverse causation is also possible, although it is unlikely in this context for several reasons. Reverse causation would mean that former supporters of the Democratic presidential candidate in 2012 shifted to support the Republican in 2016 for reasons completely unrelated to the substance of these analyses. After they had shifted to support Trump for other reasons, one could argue that opinion leadership by Trump induced opinions on these issues to become more like his positions. In other words, change in candidate preference drove change in issue opinions. Although evidence of elite opinion leadership is common, it generally occurs because people change opinions toward the opinions held by the party and elites that they have long supported. The leaders of one’s party espouse issue positions that rank and file party members subsequently adopt. I am unaware of evidence of opinion leadership by outparty leaders. Respondents would need to have changed their minds to support Trump both for unrelated reasons and well in advance of him being able to exercise opinion leadership over them. Strong commitments facilitate opinion leadership, but nascent, weak commitments are unlikely to do so.

Perhaps the most compelling evidence against interpreting this evidence as opinion leadership by Trump comes from the panel findings themselves. Only for trade is there evidence of the public shifting in the same direction as Trump (Fig. 1 and Table S1). For China, mass opinions did not change at all among either partisan group, and for immigration, they changed in the direction opposite of Trump’s views. In addition, as illustrated in Table 1, change over time in individuals’ issue opinions did not correspond to change over time in support for the Republican candidate. If opinion leadership was occurring, these two changes over time should certainly covary, yet they do not. Instead, it is the combination of changing personal opinions and independently assessed changing perceptions of the positions of the party leadership that combined to alter vote choice.

One exception is SDO, where it is plausible that increasing levels of SDO produce shifts in favor of Trump as well as that becoming a Trump supporter could cause increased SDO. Again, change in candidate preference from 2012 to 2016 would need to have occurred for reasons unrelated to this model, and Trump’s popularity would need to have subsequently caused increased SDO specifically among new Trump supporters. Whether this is a more plausible explanation than group status threat increasing support for a candidate emphasizing protectionist and prodominant status group policies remains to be seen. To date, SDO has been documented to increase strictly when group boundaries are made salient and people’s group status is threatened (46⇓–48).

Contrary to one previous study, I do not find that the increased salience of immigration (3) or that changing opinions on immigration fueled additional Trump support. Although these surveys, as others, show that immigration views are correlated with racial animus and SDO, status threat is not the usual form of prejudice or stereotyping that involves looking down on outgroups who are perceived to be inferior; instead, it is borne of a sense that the outgroup is doing too well and thus, is a viable threat to one’s own dominant group status. As a highly visible indicator of racial progress, a well-educated, Harvard Law-trained African American president is indeed threatening to dominant white status (54, 55), whereas immigrants arriving with nothing but the clothes on their backs apparently are not. For a dominant group to be threatened by an outgroup, the outgroup needs to be perceived as powerful. Traditional racial stereotypes of poor, uneducated, or unintelligent minority groups do not fuel the sense that one’s dominant group status is being challenged. As a result, immigration is unlikely to trigger dominant group status threat, particularly in a country with relatively few new immigrants. However, a sense of threat is triggered by racial progress in a majority–minority America; an increasingly powerful country, such as China; or an America that is no longer the dominant economic superpower. The rising sense of racial and global threat in the United States could not be more opportune for a candidate seeking to capitalize on status threat-based issues.

Conclusion

Narratives are important, because they structure people’s understanding of what has occurred and why. They also guide the behavior of elected representatives in deciding how to represent their constituencies. When the people have spoken, the postelection narrative decides what it is they have said. Based on these results, it would be a mistake for people to understand the 2016 election as resulting from the frustration of those left behind economically. Instead, both experimental evidence and panel survey evidence document significant political consequences from a rising sense of status threat among dominant groups in the United States.

Lack of a college education was persistently noted as the strongest predictor of Trump support. This pattern led journalists with limited data toward economic explanations. However, education is also the strongest predictor of support for international trade, a relationship that is not tied to income or occupation so much as ethnocentrism (52). Negative attitudes toward racial and ethnic diversity are also correlated with low levels of education. In this election, education represented group status threat rather than being left behind economically. Those who felt that the hierarchy was being upended—with whites discriminated against more than blacks, Christians discriminated against more than Muslims, and men discriminated against more than women—were most likely to support Trump.

Why does it matter whether Trump’s support was driven by being left behind economically as opposed to a sense that one’s status in the domestic or international hierarchy has suffered? Some workers obviously have suffered financially, even if the general trend is toward improvement. However, these losses were not politicized when it came to voting in 2016. Trump’s victory may be viewed more admirably when it is attributed to a groundswell of support from previously ignored workers than when it is attributed to those whose status is threatened by minorities and foreign countries. More importantly, elected officials who embrace the left behind narrative may feel compelled to pursue policies that will do little to assuage the fears of less educated Americans. Furthermore, Trump’s “us vs. them” rhetoric does little to lead whites and minorities or Americans and foreigners to view one another in less threatening ways, and it calls to whites’ attention the fact that they are already doing quite well relative to minority groups and relative to those in the countries that they often find threatening.

The left behind thesis has focused attention on economically beleaguered victims of trade-related job loss. While this group certainly deserves public support, misunderstanding the election narrative still has potentially negative consequences. Most manufacturing job loss is not related to trade (56). Furthermore, Trump’s supporters largely oppose strengthening the safety net for those left behind (Table S4). Those concerned with left-behind sectors are likely to be disappointed if they expect the current administration and its supporters to prioritize the economically beleaguered manufacturing sector.

The 2016 election was a result of anxiety about dominant groups’ future status rather than a result of being overlooked in the past. In many ways, a sense of group threat is a much tougher opponent than an economic downturn, because it is a psychological mindset rather than an actual event or misfortune. Given current demographic trends within the United States, minority influence will only increase with time, thus heightening this source of perceived status threat. Although whites will likely still be the best-educated and most well-off racial group, by 2040, they are unlikely to dominate in numbers. Likewise, despite US status as an extremely wealthy country relative to those countries perceived to threaten it economically, many Americans find that small comfort.

# 1NR

## BBB

### L/T

#### Their ev says it’s popular with the Antitrust Subcommittee who self selected to enforce AT– NOT the centrists most vulnerable to new pressure from constituents – that’s Salvino – particularly Manchin

Lord 12-1-21 (Joseph Lord, congressional reporter at Epoch Times, former scholar in the Lyceum Program, BA Philosophy, Clemson University, “Senate Commerce Committee Deadlocks on FTC Pick Bedoya,” The Epoch Times, 12-1-2021, <https://www.theepochtimes.com/senate-commerce-committee-deadlocks-on-ftc-pick-bedoya_4133298.html>

The Senate Commerce Committee deadlocked on a vote to confirm Alvaro Bedoya’s nomination to become one of the Federal Trade Commission’s (FTC) five commissioners.

On Dec. 1, the committee voted 14–14 on the nomination, but under Senate rules, it can proceed to the full Senate for a vote.

President Joe Biden nominated Bedoya in September to join the board of the FTC, which deals primarily with antitrust and consumer protection law.

Bedoya, a Georgetown University law professor, has focused much of his work on the connection between facial recognition technology and civil rights. More specifically, Bedoya has argued that facial recognition technology has often been used in a way that is biased against immigrants and other minorities.

If confirmed, Bedoya would join the FTC under newly installed Chair Lina Khan, and give Democrats a 3–2 majority.

Khan has been outspoken in supporting the use of antitrust law against tech giants. In his role, Bedoya would focus on the FTC’s goal of consumer protection.

Citing Bedoya’s “divisive views,” the committee’s ranking Republican member, Sen. Roger Wicker (R-Miss.), was one of the 14 Republicans to vote against the confirmation. Bedoya’s Twitter page showcases some of these “divisive views.”

On Twitter, Bedoya has given his endorsement to the Immigrant Defense Project, which markets itself as “promot[ing] fundamental fairness for immigrants accused or convicted of crimes.” More specifically, the organization has a focus on illegal and non-naturalized immigrants, describing one of its aims as “working to transform unjust deportation laws and policies.”

Bedoya has also opined on a litany of other issues, including abortion issues and Democrats’ multitrillion-dollar social spending bill.

“I will not vote to report the nomination of Mr. Bedoya to be the commissioner of the FTC,” Wicker said in his opening remarks. “I remain concerned about the frequency with which he has expressed divisive views on policy matters, rather than a more unified and measured tone.

“There has been a troubling trend of politicization at the FTC, which is different from how it has been in previous years. I fear Mr. Bedoya would not bring the cooperative spirit to the commission that we need at this time.”

Later in the session, Sen. Amy Klobuchar (D-Minn.) called for a vote on Bedoya’s nomination.

The committee, composed of 14 Democrats and 14 Republicans, voted along party lines. Even Sen. Kyrsten Sinema (D-Ariz.), who has struck a moderate tone against fellow Democrats on several occasions, joined with the party to vote for the nomination.

Given the current composition of the Senate, evenly split between 50 Democrats and 50 Republicans, Senate Majority Leader Chuck Schumer (D-N.Y.) and Minority Leader Mitch McConnell (R-Ky.) put in place a new procedural maneuver to allow deadlocked committees to be bypassed altogether.

Under the new rules, either leader can put forward a motion to bring matters straight to the Senate floor in the event of a tie in committee.

If Bedoya’s nomination is sent to the Senate floor under this procedure, Vice President Kamala Harris’s tie-breaking vote would push Bedoya’s nomination over the finish line—assuming that all 50 Senate Democrats unanimously support the nominee.

The evenly split Senate has already used the procedure to confirm Biden nominees.

In March, Xavier Becerra’s nomination to head the Department of Health and Human Services was evenly split in the Senate Finance Committee in another 14–14 vote.

But even if the procedure is invoked to bring Bedoya to a floor vote, his confirmation is far from guaranteed.

Moderate Sen. Joe Manchin (D-W.Va.), a self-described “conservative Democrat,” has been willing to break with his party on issues—including Biden nominees.

Early in Biden’s tenure in office, Manchin joined with Senate Republicans to strike down Biden’s nominee for White House budget director, Neera Tanden. Without Manchin’s support, Harris can’t cast a tie-breaking vote.

Manchin, who has emphasized the importance of unifying the divided nation, may also take issue with Bedoya’s views on divisive issues and could derail the nomination.

If Bedoya is confirmed, it will be another loss for Biden, who has in the past failed to have nominees confirmed. Aside from Tanden, Biden also was forced to withdraw gun control advocate David Chipman’s nomination to the Bureau of Alcohol, Tobacco, and Firearms for views that several Democrats, including Manchin, found unpalatable.

#### Popular policies don’t generate further support. *Biden can only go down---not up.*

Perry Bacon Jr. 3/2/21, a senior writer for FiveThirtyEight, “Why Republicans Don’t Fear An Electoral Backlash For Opposing Really Popular Parts Of Biden’s Agenda,” <https://fivethirtyeight.com/features/why-republicans-dont-fear-an-electoral-backlash-for-opposing-really-popular-parts-of-bidens-agenda/>

Republicans in the U.S. House last week unanimously opposed President Biden’s economic stimulus bill, even though polls show that the legislation is popular with the public. The U.S. Senate will consider the bill soon — and it looks like the overwhelming majority of Republicans in that chamber will oppose it as well. And it’s not just the stimulus. House Republicans also last week overwhelmingly opposed a bill to ban discrimination on the basis of sexual orientation and gender identity. And the GOP seems poised to oppose upcoming Democratic bills to make it easier to vote and spend hundreds of billions to improve the nation’s infrastructure. All of those ideas are popular with the public, too. “Duh,” you might say. Of course, the party out of power opposes the agenda of the party in power. Democrats did that during former President Donald Trump’s four years. Republicans did it during former President Barack Obama’s two terms. The parties just disagree on a lot of major issues. You’ve seen this movie before, right? This sequel is a little different, actually. Obama’s health care bill was only hovering around majority support as it moved through Congress. Trump’s proposals to repeal Obamacare and cut corporate taxes were downright unpopular. In contrast, Biden and the major elements of his agenda are popular. And the Republican Party isn’t, which helps explain why it was swept out of power in the 2018 and 2020 elections. So if an unpopular party uniformly opposes popular policies in the run-up to 2022 and 2024, is it buying itself a ticket further into the political wilderness? Not necessarily. There are several reasons to think that opposing popular policies won’t hurt Republicans electorally, and conversely, that implementing a popular agenda won’t necessarily boost Biden that much. The first reason that congressional Republicans can afford to oppose popular ideas is one that you have probably read a lot about over the last several years: The GOP has several big structural advantages in America’s electoral system. Because of the Electoral College, Trump would have won the presidency with around 257,000 more votes in Michigan, Pennsylvania and Wisconsin, even though he lost nationally by more than 7 million votes. The Senate gives equal weight to sparsely populated states like Wyoming and huge ones like California, so the chamber’s 50 Democratic senators effectively represent about 185 million Americans, while its 50 Republican senators represent about 143 million, as Vox’s Ian Millhiser recently calculated. Gerrymandering by Republicans, as well as the weakness of Democrats in rural areas, makes it harder for Democrats to win and keep control of the House even when most voters back Democratic House candidates. That’s what happened in 2020. Put all that together, and congressional Republicans are somewhat insulated from the public will. In turn, the advantage for Biden and congressional Democrats of being closer to the public’s opinions is blunted. Second, electoral politics and policy are increasingly disconnected. More and more Americans vote along party lines and are unlikely to break from their side no matter what it does. Some scholars argue that voters’ attachments to the parties are not that closely linked to the parties’ policy platforms but rather more akin to loyalty to a team or brand. And partisanship and voting are increasingly linked to racial attitudes, as opposed to policy. So GOP-leaning voters may support some Democratic policies but still vote for Republican politicians who oppose those policies. Third, the last several midterm elections have all been defined by backlashes against the incumbent president. You could argue that there’s nothing inevitable about this, and that former President George W. Bush (Social Security reform, Iraq War), Obama (Obamacare in 2010 and its flawed rollout in 2014) and Trump (Obamacare repeal) all did or proposed controversial things that irritated voters. Maybe if Biden sticks to popular stuff he’ll buck the trend. But it could instead be the case that voters from the president’s party tend to be kind of fat and happy in midterms, while the opposition is inspired to turn out. So even if Biden does popular things, GOP voters could be more motivated to vote in November 2022. Fourth, voters may like a president’s policies in the abstract but still think he isn’t doing a good job or that his policies aren’t that effective if those policies aren’t bipartisan. Think of this as the Mitch McConnell theory. Early in Obama’s first term, the last time Democrats had control of the House, Senate and the presidency, the Kentucky senator and others in the GOP leadership came up with a strategy of trying to get as few congressional Republicans as possible to back then-President Obama’s ideas. As McConnell said publicly back then, he viewed voters as not especially attuned to the day-to-day happenings in Washington. Instead, he said, they evaluate a president in part based on whether his agenda seems divisive, particularly a president who campaigns on unifying the country (as both Obama and Biden did). That allows the opposition party to create the perception of division simply by voting against the president’s agenda. Put another way: The opposition party can guarantee a lack of bipartisan support — and then criticize the president for lacking bipartisan support.

## bedoya

### O/V – Link T/C

#### Link alone turns solvency – implementation’s impossible without Bedoya – AND this window’s key – once the Reps retake Congress, they’ll use oversight powers to shut down the plan

Zakrzewski 3-3 (Cat Zakrzewski, technology policy reporter at The Washington Post, covers antitrust, privacy and regulating social media, “Democrats move a step closer to breaking deadlocks at FTC and FCC,” The Washington Post, 3-3-2022, <https://www.washingtonpost.com/technology/2022/03/03/fcc-ftc-deadlock-biden/>)

Democrats returned to power in Washington with big promises to rework the laws that govern tech giants — priorities President Biden emphasized at his first State of the Union address, with a call to boost protections for children online and expand Internet access. But implementing this ambitious tech agenda hinges on breaking partisan deadlocks at two key agencies, the Federal Communications Commission and the Federal Trade Commission, where tiebreaking nominations have been delayed.

Democrats came one step closer to gaining control Thursday morning. The Senate Commerce Committee voted 14 to 14 along party lines to advance FCC nominee Gigi Sohn and FTC nominee Alvaro Bedoya to the Senate floor. Committee Chair Maria Cantwell (D-Wash.) said she would report the ties to the Senate floor, where Democrats hold a narrow majority secured only by the tie-breaking vote of Vice President Harris.

Both agencies with broad oversight over Silicon Valley companies, the FCC and FTC have lacked a Democratic majority for months, preventing them from moving forward with widely anticipated initiatives, such as restoring open-Internet regulations and crafting new competition rules.

While the agencies are split, FCC Chair Jessica Rosenworcel and FTC Chair Lina Khan have had to negotiate compromises with Republican commissioners, who disagree with some of their key positions.

“It’s difficult to do the major things that the White House wants and the leadership of the agencies want without a majority,” said Blair Levin, who served as the executive director of the National Broadband Plan during the Obama administration.

Sohn, an open-Internet advocate, and Bedoya, a critic of surveillance software, are among a slate of Biden nominees who have signaled the dawn of more aggressive tech and telecom regulation. But the clock is ticking on that agenda — especially as it appears increasingly likely that Republicans could regain control of Congress in the midterms and subject the agencies to tougher oversight.

For the entirety of Biden’s term, the FCC’s 2-to-2 split has prevented the agency from following through on a key Biden campaign promise to restore Obama-era net neutrality rules, which require Internet providers to treat all Web traffic equally. The FTC has been in a political tie since September, when former Democratic commissioner Rohit Chopra was confirmed to lead the Consumer Financial Protection Bureau.

“All of this has put the Biden agenda on both tech and telecom significantly behind,” said Harold Feld, the senior vice president of Public Knowledge, a consumer advocacy group launched by Sohn.

The delays have been partially driven by a 50-50 Senate, where Democrats hold a fragile majority. The Senate Commerce Committee had been expected to vote on Sohn’s and Bedoya’s nominations a month ago, but the Senate Commerce Committee pulled them from consideration after Sen. Ben Ray Luján (D-N.M.) suffered a stroke. Both nominees faced fierce opposition from some Republicans, and it was unclear if they would have the necessary votes to make it to the Senate floor without Luján, who returned to work on Thursday.

In confirmation hearings last year, Republican senators tore into both nominees’ old tweets and grilled them on past political positions. Sohn’s nomination became so contentious that after the committee’s top Republican raised concerns about her impartiality, the committee held a second hearing. Sohn previously sent a letter to the acting FCC general counsel, saying she said she would recuse herself from some broadcast regulatory issues following scrutiny of her previous work because of positions she took when she was president of Public Knowledge, a consumer advocacy group focusing on Internet and other communication tools.

Industry groups have also ratcheted up the pressure. The U.S. Chamber of Commerce on Tuesday sent a letter to all members of the Commerce Committee, opposing Sohn’s nomination.

“At a time when the Biden administration is launching an unwarranted and unjustified campaign against the business community through federal regulators, Ms. Sohn’s track record and her views on competition would create unnecessary obstacles to crafting effective, durable policies to ensure all Americans are connected,” Neil Bradley, the executive vice president and chief policy officer of the U.S. Chamber of Commerce, wrote in the letter.

Allies of Sohn have accused the industry of trying to slow down the nomination process. “The longer they can stall the FCC at 2-2, the longer it takes to move forward on things the industry is unhappy about,” said Andrew Jay Schwartzman, who hired Sohn at the Media Access Project in the 1990s.

The vote comes at a critical moment for both agencies. In addition to restoring net neutrality, the FCC is under pressure to expand competition among broadband providers, improve maps that are used to allocate broadband funding and expand programs to address Internet affordability. At the FTC, Khan has signaled she wants to create new competition and privacy rules, and bring innovative antitrust cases against tech companies. But that agenda can’t be accomplished without votes.

Consumer advocates say for the brief period that the FTC had a full slate of commissioners last summer, it was active. The agency refiled an antitrust case against Facebook and revoked rules governing mergers.

“And then when they went down to 2-2, things sort of quieted down,” Feld said.

#### AND, loss of agency PC means courts and Congress will undercut AND companies won’t comply – turns FTC cred

Kovacic 14 (William E. Kovacic, Former FTC Commissioner, Global Competition Professor of Law and Policy, The George Washington University Law School; David A. Hyman, Former FTC Special Counsel, H. Ross & Helen Workman Chair in Law and Professor of Medicine, University of Illinois; “Why Who Does What Matters: Governmental Design and Agency Performance;” October 2014, George Washington Law Review, Vol. 82, No. 5, Accessed through HeinOnline, TM)

2. Branding and Credibility

Like nongovernment institutions such as private firms, public agencies have "brands."11 6 For a public agency, a brand conveys information about the agency's goals and priorities and serves as a signal of its reputation. The assignment of policy functions affects the clarity and strength of the agency's brand. Excessive diversification or the combination of conflicting duties can confuse or dilute the brand. A confused or diluted brand gives poor guidance to agency personnel about which projects to pursue, what theories to rely upon, and what rules to use to resolve disputes.'17 To outsiders, agencies with diluted or confused brands are more likely to appear unreliable, because they are aimless, disoriented, or erratic.

Poor branding also weakens the agency's credibility in the eyes of important external decisionmakers. An agency with a strong brand stands a better chance of persuading legislators and their staffs that it is a worthy recipient of additional funding or powers. A brand also reduces an agency's vulnerability to intrusive oversight or other forms of second-guessing or reversal. A good brand also improves the agency's stature when it appears before the courts. As the agency's brand improves, so too increase its prospects of getting deference when courts review its work.118 **[[BEGIN FOOTNOTE 118]]** 118 Erica Teichert, Breyer Gives Antitrust Agencies Top Marks for EU Ties, LAw360 (Apr. 3, 2014, 7:31 PM), http://www.taw360.com/articles/524851 (subscription required) **[[END FOOTNOTE 118]]** Finally, a well-respected agency probably enjoys an advantage in dealing with regulated firms and their advisors. For example, parties know that well-branded agencies receive more respect from the courts. Consequently, in negotiations over alleged infringements, a well-branded agency may be able to obtain better settlement terms and, perhaps, gain better compliance with its policy positions.119

Combining functions also affects the size of an agency's political capital. In our experience, regulatory bodies are always accumulating or spending political capital. When agencies make policy choices and initiate specific matters, they are either spending or accumulating political capital. Combining functions that build political capital with functions that run political capital deficits may help an agency to perform functions that are important to the economy but are unpopular. In effect, one function cross-subsidizes the other. Conversely, an agency with policy duties whose implementation chronically yields political capital deficits will find it difficult to establish political allies, and [prevent] blunt political attacks that threaten its effectiveness.120

Branding considerations also help explain why agencies sometimes resist the assignment of new responsibilities, even when the new function would be accompanied by more resources or greater visibility.121 For the same reason, agencies seek to divest responsibilities that are seen to collide with their core responsibilities.122

### O/V – DA S/C

#### Means only DA solves case – Bedoya will build consensus for the plan once confirmed

Karr 3-3 (Timothy Karr, Senior Director of Strategy and Communications at Free Press, formerly worked throughout Southeast Asia as an editor, reporter and photojournalist for the Associated Press, The New York Times, and Time, Inc., “Senate Commerce Committee Advances the Nominations of Alvaro Bedoya and Gigi Sohn,” Free Press, 3-3-2022, https://www.freepress.net/news/press-releases/senate-commerce-committee-advances-nominations-alvaro-bedoya-and-gigi-sohn)

On Thursday, the Senate Commerce Committee advanced the nominations of Alvaro Bedoya and Gigi Sohn to respectively fill final vacant commissioner spots at the FTC and FCC. Both longtime public-interest advocates, Bedoya and Sohn now must be discharged from the committee’s consideration due to the party-line, tied-committee vote in the evenly divided Senate. They must then be confirmed by the full Senate before assuming their roles at these agencies.

The two had faced opposition from lawmakers and lobbyists representing the interests of tech, media and telecom industries, which have sought to delay the confirmation process as long as possible, and prevent both agencies from acting on important issues related to affordable-broadband access, open-internet and online-privacy protections, media diversity and platform accountability. Seating Bedoya and Sohn will give the Democratic majority at each agency the votes it needs to rule on these crucial matters.

Free Press Action VP of Policy and General Counsel Matt Wood made the following statement:

“Today’s vote clears one of the last hurdles to getting these agencies to full strength, and giving people the benefits and safeguards they need to connect and communicate in the United States. Both Alvaro Bedoya and Gigi Sohn are devoted public servants and advocates for policies and programs that will improve people’s lives. They have the political savvy and depth of legal and technical knowledge to take on the many challenges before them at both agencies. They have a proven ability to reach beyond partisan divides and build consensus. With Chairwoman Cantwell having successfully navigated this tricky process, it’s time for Majority Leader Schumer and the Senate to confirm these highly qualified nominees and let them get to work as soon as possible.

### T/C – Climate (Regen Ag)

#### Turns and solves climate

Gustin 19 (Georgina Gustin, covers agriculture for Inside Climate News, won numerous awards, including the John B. Oakes Award for Distinguished Environmental Journalism and the Glenn Cunningham Agricultural Journalist of the Year, formerly reported for the St. Louis Post-Dispatch and CQ Roll Call, graduate of the Columbia University Graduate School of Journalism, “Industrial Agriculture, an Extraction Industry Like Fossil Fuels, a Growing Driver of Climate Change,” Inside Climate News, 1-25-2019, https://insideclimatenews.org/news/25012019/climate-change-agriculture-farming-consolidation-corn-soybeans-meat-crop-subsidies/)

On his farm in southwestern Iowa, Seth Watkins plants several different crops and raises cattle.

He controls erosion and water pollution by leaving some land permanently covered in native grass. He grazes his cattle on pasture, and he sows cover crops to hold the fertile soil in place during the harsh Midwestern winters.

Watkins’ farm is a patchwork of diversity—and his fields mark it as an outlier.

His practices don’t sound radical, but Watkins is a bit of a renegade. He’s among a small contingent of farmers in the region who are holding out against a decades-long trend of consolidation and expansion in American agriculture.

Watkins does this in part because he farms with climate change in mind.

“I can see the impact of the changing climate,” he said. “I know, in the immediate, I’ve got to manage the issue. In the long term, it means doing something to slow down the problem.”

But for several decades, ever-bigger and less-varied farms have overtaken diversified operations like his, replacing them with industrialized row crops or gigantic impoundments of cattle, hogs and chickens.

This trend is a central reason why American agriculture has failed to deal with climate change, a crisis that has been made worse by large-scale farming practices even as it afflicts farmers themselves.

Consolidation has swallowed smaller farms, bolstering a financial and regulatory status quo that has thwarted the kind of climate-friendly approach Watkins and his fellow outliers employ.

“I don’t think any of us wants to get bigger,” Watkins mused. “It’s just the curse of a commodity business. We made all the focus on production, and all the economics, the subsidies, are tied to production. We have a production-focused agriculture policy.”

This article is part of a series by InsideClimate News exploring agriculture’s role in the global warming crisis and the forces preventing it from playing a greater part in combating climate change.

The consolidation of American farming, reinforced by an emphasis on just one or two main crops—corn and soybeans—has led to a system in which there’s little incentive to grow much else, especially in the agricultural heartland of the Midwest.

This has profound climate and environmental implications. Mega-sized farming encourages practices that degrade the soil, waste fertilizer and mishandle manure, all of which directly increase emissions of greenhouse gases. At the same time, it discourages practices like “no-till” farming and crop rotation that grab carbon dioxide from the air, store it in the soil and improve soil health.

“The industrial food system presents a barrier to realizing the potential climate benefits in agriculture,” said Laura Lengnick, a soil scientist who has written extensively on climate and agriculture. “We continue to invest in this massive corn and soybean and beef-making machine in the Midwest despite all that we know about the changes we could make that would maintain yields, improve farm profitability and deliver climate change solutions.”

This is happening as landmark government reports and ample academic research show that agricultural soils are critical for stabilizing the climate.

One recent government report called the trend toward ever-bigger farms “persistent, widespread and pronounced.”

The report, a comprehensive assessment of consolidation published last year by the U.S. Department of Agriculture’s Economic Research Service, confirmed what was already apparent to small farmers: “Agricultural production has shifted to much larger farming operations over the last three decades.”

While the report concluded that consolidation is responsible for improvements in productivity, it noted: “At the same time, large-scale farming operations are said to force small farms out of business, damage the viability of rural communities, reduce the diversity of agricultural production, and create environmental risks through their production practices.”

More than a third of cropland is on farms bigger than 2,000 acres. That’s twice the share of land held on big farms 30 years ago.

Bigger operations are richer, too. Half of the value of farm production came from those with annual sales of at least $1 million.

The drivers behind this ongoing expansion are intertwined and complex—a confluence of politics, economics and technology. Agricultural policy has long emphasized over-production, propped up by government subsidies that favor certain crops. Lawmakers have been unwilling to change the system, largely because of a powerful farm lobby and the might of agribusinesses that profit from technological advancements.

“Farmers are dictated in how to farm,” said Adam Mason, a policy director with Iowa Citizens for Community Improvement. “They’re locked into a system.”

This system has transformed agriculture into a business that resembles the fossil fuel industry as it extracts value out of the ground with relentless efficiency and leaves greenhouse gas pollution in its aftermath.

“From a climate, soil health, and carbon sequestering perspective, we need greater diversity,” said Ferd Hoefner of the National Sustainable Agriculture Coalition. “We’re never going to make huge progress on soil health and carbon sequestration until we get that diversity.”

### Turns Food

#### Turns food impacts

Mishan 21 (Ligaya Mishan, award-winning food writer for the New York Times and T magazine, “The Activists Working to Remake the Food System,” The New York Times, 2-19-2021, <https://www.nytimes.com/2021/02/19/t-magazine/food-security-activists.html>)

Today, activism exists at every point in the food supply chain: how it’s produced (unsustainable farming practices; unsafe working conditions and exploitation of undocumented immigrants and prison labor; abuse of animals), who gets to produce it and how it’s sold (racial disparities in lending and investment; the corporate advantage of scale; misrepresentation and erasure of minority cultures) and who gets to eat it (poverty and hunger; neighborhoods lacking access to fresh, healthy food; moralizing over how food stamps are used). Some of these issues have been championed by high-end chefs, who in our obsessive food culture command a certain reverence, although their public exhortations tend to be more celebratory than confrontational — embracing seasonality and farm-to-table dining, for example — and stop short of policy recommendations. That might be changing with the pandemic: The Spanish-born José Andrés, who runs restaurants in Las Vegas, Miami and Washington, D.C., and who has provided disaster food relief for millions in the wake of hurricanes and disease, recently criticized the government for failing to end hunger due to a lack of “political will.”

But much of the deep work is happening out of sight, in grass-roots efforts like the community gardens that Karen Washington, 66, has built in the Bronx, which started in 1988 with a single garbage-strewn lot across the street from her home. She didn’t have a grand plan — it was enough at first just to have transformed an eyesore into an oasis she called the Garden of Happiness, and to be able to share fresh vegetables with her neighbors — but she soon found herself joining forces with other urban gardeners to fight the city’s attempt to evict them and auction off these once-neglected and now thriving sites for development. (In the end, conservation groups stepped in to buy some of the lots.) She has since cultivated many gardens and drafted policy proposals for government officials, but the heart of her work is still local, done in and for her community. During the pandemic, she went around the neighborhood checking that the elderly had enough to eat, and much of her harvest has gone to food pantries and soup kitchens. “If we’re cooking, we cook a little extra,” she says.

At the same time, she knows this is only a stopgap solution. “For so long we’ve been beholden to charity,” she says. “Food is given out; we stand on line. No one asks, ‘Why are we on the line?’”

The field of food activism is so vast, it’s inevitably fragmentary, with many constituencies, from migrant blueberry pickers in Washington state, choking on the smoke of wildfires in summer, to Black urban farmers in Atlanta, contending with a racial legacy of land dispossession, to taco truck and halal cart operators on the streets of New York City who lost up to 80 percent of their sales at the start of the pandemic and were excluded from government relief because they deal mostly in cash, with limited documentation, at the fringes of the official economy. Many found themselves down to their last few dollars after working for years, sometimes 14 hours a day, and had to turn to food pantries to survive. “It’s shameful,” says Carina Kaufman-Gutierrez, 30, the deputy director of the Street Vendor Project at the Urban Justice Center in Manhattan, which has a staff of six to advocate on behalf of around 20,000 street vendors, “that the people waiting in line for food are the people who’ve spent their lives serving food to others.”

Yet, since the 1980s, the primary message of the food movement to reach the broader public has been not a call to arms but rather a vaguely feel-good mantra: to eat more healthily by shopping at the farmers’ market and buying organic, unprocessed, non-mass-market foods. Certainly these strategies help the environment and support small businesses, but this sometimes seems like just a side benefit, with the emphasis on personal wellness, as if the only way to persuade people to “vote with their fork” on behalf of laborers or the planet were by appealing to their self-interest. It points to a tension in food activism between trying to influence individual acts of consumption, in hopes of bringing about incremental change, and taking direct political action. “The belief that we will change things through individual market choices is a way of not questioning the market itself,” says Eric Holt-Giménez, 67, an agroecologist and the former executive director of the Oakland-based think tank Food First. “We tend to concentrate on the romantic — the small farmer growing organic vegetables — when all this time we could’ve been fighting for parity and antitrust laws.”

### Turns Populism

#### Solves rural political alienation

Kelloway 21 (Claire Kelloway, senior reporter and researcher with the Open Markets Institute, primary writer of FoodAndPower.net, former sustainability fellow with Bon Appetit Management Company, BA political science, concentration in political economy and sustainable development, Carleton College, “How Biden can rein in the Big Meat monopoly,” Vox, 2-24-2021, https://www.vox.com/future-perfect/22298043/meat-antitrust-biden-vilsack)

Taking on Big Meat wouldn’t just help consumers, farmers, and meatpacking workers; one poll found 82 percent of independent rural voters would be more likely to vote for a candidate who supports “a moratorium on factory farms and corporate monopolies in food and agriculture,” so it could also help halt Democrats’ losing streak in rural areas and heartland states.

As progressives take their campaign against consolidation into a higher gear with a friendlier administration in power, Big Meat needs to be on the priority list.

#### That’s the root cause of US populism

Rodriguez-Posea 21—(Professors of Economic Geography at the London School of Economics). Andrés Rodríguez-Posea, Neil Lee, & Cornelius Lipp. August 11, 2021. “Golfing with Trump. Social capital, decline, inequality, and the rise of populism in the US”. Cambridge Journal of Regions, Economy and Society. Accessed 10/2/21.

We hypothesise that low social capital alone is unlikely to have triggered the swing of voters to Donald Trump and that interpersonal inequality at the local level is unrelated to increases in Trump’s vote share. We propose that it is precisely the long-term economic and demographic decline of the places that still rely on a relatively strong social capital that is behind the rise of populism in the US. Strong, but declining communities in parts of the American Rustbelt, the Great Plains, and elsewhere, reacted at the ballot box to being ignored, neglected and being left-behind.

The results of the analysis show that increases in populist vote in the US are fundamentally driven by the economic and demographic decline of strongly cohesive midtown and rural America. These places still have greater levels of social capital than more dynamic and unequal areas of the US. This social capital has played a role in the swing of votes within communities driven by a growing feeling of frustration, increasingly known as the rising geography of discontent (McCann, 2020) or the politics of resentment (Cramer, 2016). In small cities and rural areas of the US, scattered predominantly across the Rustbelt and the Great Plains, the rise in populist vote represents a reaction of strong communities in which individual losses are identified with collective losses. These so-called ‘places that don’t matter’ (RodríguezPose, 2018) have had enough of seeing their people leave and their jobs go and have used the ballot box to exact revenge on a system they consider offers little to them. By contrast, the more dynamic, mainly urban, areas of the US, where society is often less cohesive, where there is less social capital and where interpersonal inequalities are significantly higher, have, for the moment, shunned the calls of populism.

## Thumpers

### AT: Thumper – Khan / Overreach Inevitable

#### Their ev’s speculative – Khan may have an unpopular wishlist, BUT actual enforcement’s been deferring to Congress – they know they can’t advance a partisan agenda without Bedoya

Vittorio 2-8 (Andrea Vittorio, Senior Reporter at Bloomberg Law, BA journalism, George Washington University, “FTC Sees Growing Pressure for Data Privacy Rule as Pick Stalled,” Bloomberg Law, 2-8-2022, <https://news.bloomberglaw.com/privacy-and-data-security/ftc-sees-growing-pressure-for-data-privacy-rule-as-pick-stalled>)

The Federal Trade Commission is under mounting pressure to kick off long-anticipated federal rules protecting personal information collected by companies amid delays with President Joe Biden‘s pick to fill the deadlocked agency’s vacant seat.

Advocacy groups are looking to the commission for policy action amid years of stalled negotiations in Congress over a national privacy law and a growing patchwork of state laws imposing new compliance obligations on companies.

But with two Democrats and two Republicans on the commission, having the votes to launch a potentially years-long rulemaking process likely depends on Senate confirmation of Alvaro Bedoya, the Georgetown University law professor Biden’s picked to fill the FTC’s empty fifth seat.

Bedoya has said he supports the agency’s pursuit of data protection rules. He’s expected to be confirmed as an FTC commissioner, though it’s unclear when his nomination might be reach the Senate floor, after one Commerce, Science, and Transportation Committee vote was postponed and another tied.

A spokesperson for the commission declined to comment on potential new agency rules. The commission advocated for using its policy tools, including new rules, to protect people’s privacy in a September report to Congress.

The challenge, for those pushing the FTC to establish such rules, is to start the proposal process as soon as possible to reduce the threat of any action being dropped or overturned if a Republican wins the White House in 2024. The FTC added the topic of consumer data protection to its regulatory agenda for the first time in December.

“That’s why we’re pushing the FTC to act because they have to get this process started if there’s a hope to get it finished,” said Alan Butler, executive director and president of the nonprofit Electronic Privacy Information Center.

The FTC, in the past, has deferred to Congress to sort out a framework for a comprehensive set of federal protections, focusing its own work on case-by-case enforcement of privacy violations. For decades, it has limited its regulatory action to areas where Congress has granted the agency specific authority, like children’s privacy.

After Democrat Lina Khan became chair in June, privacy advocates began ramping up calls for the agency to make better use of its existing privacy protection powers, despite limited data-protection resources and staff.

Now, the FTC is open to putting its resources into time-consuming rulemaking procedures, Janis Kestenbaum, a partner at Perkins Coie LLP who was senior legal adviser to a former FTC chair, said.

“That’s the sea change,” she said. A proposal would also test Khan’s drive to dust off the agency’s long-dormant rulemaking capabilities, an issue she previously pressed as an academic.

#### Deadlock froze all controversial agenda items

Davis 1-28-22 (Wendy Davis, Senior Writer at MediaPost, “Senate Committee To Vote Wednesday On FTC, FCC Nominees,” MediaPost, 1-28-2022, https://www.mediapost.com/publications/article/370721/senate-committee-to-vote-wednesday-on-ftc-fcc-nom.html)

The Senate Commerce Committee has scheduled a vote for Wednesday on whether to approve the nominations of Gigi Sohn to the Federal Communications Commission and Alvaro Bedoya to the Federal Trade Commission.

President Biden nominated Sohn and Bedoya last year, but the Senate didn't confirm either before the session ended, leaving both the FTC and FCC deadlocked with two Republicans and two Democrats. Until a fifth, tie-breaking commissioner joins both agencies, they're not likely to advance the more controversial items on their leaders' agendas -- including FCC Chair Jessica Rosenworcel's plan to restore the Obama-era net neutrality rules.

## FTC Can’t Enforce

### AT: N/L – Congress Shields

#### BUT they will actually reverse position – it’s an overwhelming empirical pattern

Jones and Kovacic 20 (Alison Jones, Professor of Law, King’s College London; and William E. Kovacic, King’s College London, George Washington University, United Kingdom Competition and Markets Authority; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

The discussion below, and history, seems to indicate, however, that more courage and more people will not necessarily overcome the implementation obstacles that stand in the way of a program that requires the rapid prosecution of a large number of complex cases against well-resourced and powerful companies. Indeed, the criticisms levied at the current system, the proposals for more effective enforcement and reform, and the scale of the action being demanded bear some resemblance to those that led to a more re-invigorated and aggressive antitrust enforcement policy in the 1960s and early 1970s. For example, at that time complaints that the FTC was in decay, was obsessed with trivial cases and failing to address matters of economic importance, anticompetitive conduct, and rising concentration,77 led the FTC to embark on a new, bold, and astoundingly broad enforcement program.78 In an effort to meet criticisms of it as a shambolic and failing institution, the FTC sought to upgrade its processes for policy planning, made concerted efforts to improve its human capital in management and case handling, and sought to improve substantive processes and the quality of its competition and consumer protection analysis.

In the end, FTC’s efforts to improve capability proved insufficient to support the expanded enforcement agenda, partly because the Commission failed to formulate an adequate plan to overcome the full range of implementation obstacles. The FTC seriously overreached because it did not grasp, or devise strategies to deal with, the scale and intricacies of its expanded program of cases and trade regulation rules, the ferocious opposition that big cases with huge remedial stakes would provoke from large defendants seeking to avoid divestitures, compulsory licensing, or other measures striking at the heart of their business, and the resources required to deliver good results. The Commission lacked the capacity to run novel shared monopoly cases that sought the break-up of the country’s eight leading petroleum refiners and four leading breakfast cereal manufacturers79 and simultaneously pursue an abundance of other high stake, difficult matters involving monopolization, distribution practices, and horizontal collaboration. The FTC also overlooked swelling political opposition, stoked by the vigorous lobbying of Congress, that its aggressive litigation program provoked.80

New legislation envisaged by reform advocates could ease the path for current government agencies seeking to reduce excessive levels of industrial concentration by arresting anticompetitive behavior of dominant enterprises (through interim and permanent relief) and by blocking mergers that pose incipient threats to competition. It seems clear, however, that such dramatic legislative proposals are likely to be fiercely contested through the legislative process and so will take time, and be difficult, to enact. Further, even if armed with a more powerful mandate, the DOJ and the FTC will still have to bring what are likely to be challenging cases applying the new laws (see Section F). The adoption, setting up, and bedding in of new legislation or regulatory structures and bodies is therefore unlikely to happen very quickly and is, consequently, unlikely to meet the demands of those seeking urgent and immediate action now.

These difficulties suggest that for the near future, at least, the agencies will have to achieve successful extensions of policy mainly through launching themselves into a number of lengthy, complex investigations and litigation based on the current regime. This means establishing violations under existing judicial interpretations of the antitrust laws and making a convincing case for the imposition of effective remedies, including structural relief.

The discussion in this section identifies likely impediments to the implementation of ambitious reforms, either through litigation (under the present-day regime) or legislation. These include judicial resistance to broader applications of the Sherman, Clayton, and FTC Acts, the complexities of designing effective remedies, the uncertainty of long-term political support for ambitious reforms and the possibilities for political backlash once agencies begin prosecuting major new cases, and the complications, and resistance, that confronts any effort in the United States to make legislative change.

A. Judicial Resistance to Extensions of Existing Antitrust Doctrine

As noted in Section II.A, judicial decisions since the mid-1970s have reshaped antitrust law; created more permissive substantive standards governing dominant firm conduct, mergers, and vertical restraints; and raised the bar to antitrust claims in a number of ways. This remolding has been facilitated by the Court’s conclusion that the Sherman Act constitutes “a special kind of common law offense,”81 so that Congress “expected the courts to give shape to the statute’s broad mandate by drawing on common-law tradition.”82 This has allowed the statutory commands to be interpreted flexibly and the law to evolve with new circumstances and new wisdom;83 for example, where there is widespread agreement that the previous position is inappropriate or where the theoretical underpinnings of those decisions have been called into question.84

The proposed solutions will depend, in the short term at least, on the ability of enforcement agencies to navigate the described jurisprudence to find an antitrust infringement and, in some instances, a further rethinking, refinement, and/or development of doctrine, through softening, modification, or even a reversal of current case law. Although such an evolution could, in theory, result, as it did over the last forty years, from a steady stream of antitrust cases, judicial appointments since 2017 have arguably made such a change in direction unlikely. Rather, it seems more probable that successful prosecution of major antitrust, and especially Section 2 Sherman Act monopolization cases, will remain challenging and may even become more difficult. Cases will be litigated before judges who are ordinarily predisposed to accept the current framework, either by personal preference or by a felt compulsion to abide by forty years of jurisprudence that tells them to do so.85 A new president could gradually change the philosophy of the federal courts by appointing judges sympathetic to the aims of the proposed transformation.86 The reorientation of the courts through judicial appointments is, however, likely to take a long time.87

Until then, trial judges and the Court of Appeals will be compelled to abide by the existing jurisprudence and will only be at liberty to develop a more flexible approach in the “gaps” or spaces left by Supreme Court opinions—for example, in relation to mergers and rebates—and through creative interpretations of the law. Such cases are, however, likely to be hard fought. Indeed, Judge Lucy Koh’s finding in Federal Trade Commission v. Qualcomm, Inc. 88 that Qualcomm’s licensing practices constituted unlawful monopolization of the market for certain telecommunications chips has provoked hostile attacks, not only from practitioners and academics but also from the DOJ, the U.S. Departments of Defense and Energy, and even one of the FTC’s own members. In a scathing op-ed in the Wall Street Journal,89 Commissioner Christine Wilson attacked Judge Koh’s “startling new creation” of legal obligations that may trigger a new wave of enforcement actions and undermine intellectual property rights. Commissioner Wilson condemned the judge’s “judicial innovations,” and “alchemy,” through reviving and expanding the Supreme Court’s 1985 opinion in Aspen Skiing Co v. Aspen Highlands Skiing Corp 90 (which she stresses was described by the Supreme Court in Trinko 91 as “at or near the outer boundary” of U.S. antitrust law), turning contractual obligations into antitrust claims, and for departing from current federal agency practice, by imposing remedies requiring Qualcomm to negotiate or renegotiate contracts with customers and competitors worldwide. She has thus urged the Ninth Circuit (on appeal), and if necessary the Supreme Court, to assess the wisdom of these sweeping changes and to stay the ruling.92

It seems likely therefore that, at the same time as bringing cases seeking to develop procedural, evidential, and substantive antitrust standards under the existing regime, additional antidotes to the stringencies of existing jurisprudence will be required, including more extensive, and expansive, use of Section 5 FTC Act to plug the gaps created by the narrowing of the scope of Section 2 Sherman Act; and/or the adoption of legislation that directs courts to apply a wider goals framework.

B. Infirmities of Section 5 of the Federal Trade Commission Act

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

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

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

as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

C. Designing Effective Remedies

Important issues arising for the new enforcement strategy proposed will be what remedies should be sought; how can an order, or decree, be fashioned to ensure that the violation is terminated, that competition on the market is restored, the opportunity for competition is re-established, and that future violations are not committed and deterred; and will a court be likely to impose any such remedy.102

The Sherman Act treats infringements of its key commands as crimes attracting severe sanctions, including fines (corporate and individual) and imprisonment. Although since 1980, the DOJ has used criminal prosecutions only to challenge hard-core horizontal cartels,103 some antitrust reform proponents are calling for the introduction of fines to sanction illegal monopolization, and some commentators have proposed that the DOJ reconsider its policy of not seeking criminal penalties beyond the Section 1 conspiracy context.104 For the time being, however, it would appear that existing civil sanctions will remain the tool of choice for DOJ in dealing with antitrust infringements and will be the only set of remedies available to the FTC, which has no mandate to bring criminal cases.

The civil remedial options, which can broadly be grouped into three categories, for the federal agencies, are nonetheless powerful in principle. The first and, perhaps, the most common form of remedy consists of controls on conduct. Conduct-related relief ordinarily takes the form of cease and desist orders that forbid certain behavior or, in a smaller number of cases, compel firms to engage in affirmative acts, such as providing a competitor access to an asset needed to compete.

The second major form of remedy is structural relief in the form of divestitures or the compulsory licensing of intellectual property that enables a firm to enter a previously monopolized market. The boundary between purely conduct-based and structural remedies is not always clear. A compulsory licensing decree has strong structural features (it directly facilitates new entry) and conduct elements (it may require the owner of the patent to provide the licensee know-how and updates of the patented technology).

The third remedy consists of civil monetary relief in the form of disgorgement of ill-gotten gains or the restitution of monopoly overcharges to victims. A number of Supreme Court decisions in monopolization cases in the late 1940s and early 1950s appeared to hold that these forms of recovery are encompassed in the mandate of courts to order equitable remedies to cure antitrust violations. The federal agencies have not used this power expansively, though it would appear to be available to recoup overcharges in Section 2 or other cases.105

The cures envisaged by many of the advocates of change call for the bold application of the full portfolio of civil remedies, including unwinding past mergers, divestment of assets, restructuring concentrated markets, limiting or reversing vertical integration or through the imposition of licensing obligations. Such advocates thus wish the DOJ and FTC to use the antitrust laws as an effective and simple mechanism for deconcentrating both monopolistic and oligopolistic markets, rapidly introducing new competition into a market; and reversing what they consider to be severe structural problems that have been allowed to develop on the market.106

Structural remedies, in particular, have always been a real and important part of the antitrust remedial arsenal,107 not only in merger cases where a violation of the antitrust rules may consist of an unlawful acquisition of shares or stock108 but also in Sherman Act cases.109 In the 1960s the FTC also sought, using its powers under Section 5 FTC Act to deconcentrate the petrol and breakfast cereal markets110 and in 1969 the Neal Report,111 commissioned by President Lyndon Johnson, proposed the adoption of laws which would allow oligopolistic industries to be deconcentrated and the condemnation of mergers on markets that were already concentrated.112

Modern antitrust has, however, had less appetite for the use of antitrust to break up companies. Although the District Court in United States v Microsoft Corp 113 ordered, at the request of the DOJ, that Microsoft be broken into two parts, the Court of Appeals, despite affirming the violation of section 2, reversed and remanded the finding that Microsoft should be split into two. Setting out a high bar for structural relief, the Court stressed that the lower court had not (1) held a remedies-specific hearing114 or (2) provided adequate reasons for the decreed remedies.115

A number of factors seem responsible for the trend away from structural remedies. First, the change in antitrust thinking that has evolved since the early 1970s, from a belief that antitrust intervention and structural remedies can improve performance116 to the current more laissez-faire one.117 Second, concerns about the effectiveness of previous attempts to deconcentrate industries,118 especially given the length of time that antitrust proceedings take.119 Third, the difficulty involved in constructing and overseeing a structural remedy effectively. Although in cases involving a merger or acquisition it may be relatively easy to structure such a remedy through disentangling assets that were once owned separately,120 outside of this situation, the question of how and what to divest might be much more speculative, seem much more risky and may in fact be complex and difficult to administer (involving significant restructuring, separation of physical facilities, and allocation of staff from integrated teams).121 These types of concern make it a challenge to persuade a court that a structural remedy is warranted and will be successful in achieving its objective.122

In the discussion above, we have been addressing the types of remedies that are imposed at the conclusion of a lawsuit. A problem in highly dynamic markets, however, is that the lag between the initiation of a case and a final order on relief may be so great that market circumstances have changed dramatically or the victim of allegedly improper exclusion may have left the market or otherwise lost its opportunity to expand and contest the position of the incumbent dominant firm. In this context, the antitrust cure arrives far too late to protect competition. The relatively slow pace of antitrust investigations and litigation (with appeals that follow an initial decision) has led some observers to doubt the efficacy of antitrust cases as effective policy-making tools in dynamic commercial sectors.

There are at least five possible responses to concerns about the speed of antitrust litigation, particularly matters involving dominant firms. First, agencies could experiment with ways to accelerate investigations, and courts could adopt innovative techniques to shorten the length of trials. In the United States, we perceive that greater integration of effort among the public agencies would permit the more rapid completion of investigations (e.g., by pooling knowledge and focusing more resources on the collection and evaluation of evidence). Courts could use methods tested with success in the DOJ prosecution of Microsoft in the late 1990s to truncate the presentation of evidence. These types of measures have some promise to bring matters to a close more quickly.

Second, the initiation of a lawsuit could be recognized as being, in some important ways, its own remedy; the prosecution of a case by itself causes the firm to change its behavior in ways that give rivals more breathing room to grow. Moreover, the visible presence of the enforcement authority, manifest by its investigations and lawsuits, causes other firms to reconsider tactics that arguably violate the law. Seen in this light, the entry of a final order that specifies remedies may not be necessary for all instances to have the desired chastening effect.

A third response is to experiment more broadly with interim relief that seeks to suspend certain types of exclusionary conduct pending the completion of the full trial.123 Effective interim measures would require the enforcement agency to develop a base of knowledge about the sector that enables it to accurately identify the practices to be enjoined on an interim basis and to give judges a confident basis for intervening in this manner.

A fourth approach would be that the remedies achieved in protracted antitrust litigation may not be so imperfect or untimely as they might appear to be. There have been a number of instances in which the remedy achieved in a monopolization case was rebuked as desperately insufficient when ordered but turned out to have positive competitive consequences.124 This is a humbling and difficult aspect of policy making. It may not be easy for an agency to persuade its political overseers—or other external audiences—that the chief benefits of its intervention will emerge in, say, two or three decades. Yet the positive results may take a long time to become apparent.

A fifth technique would be to rely more heavily on ex-ante regulation in the form of trade regulation rules that forbid certain practices. A competition authority—most likely the FTC—would use its rulemaking powers to proscribe specific types of conduct (e.g., self-preferencing by dominant information services platforms).

In this article, we do not purport to solve the problems of the remedial design set out above. There is, however, a fairly clear conclusion about how enforcement agencies should go about thinking of remedies. As we note below, there is considerable room for public agencies to design remedies more effectively by systematically examining past experience and collaborating with external researchers to identify superior techniques. In this regard, the FTC’s collection of policy tools would appear to make it the ideal focal point for the development of more effective approaches to remedial design.

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

### AT: N/L – T/L

#### 2 – FTC’s PC – is finite and key – intensifying centrists’ concerns about overreach is fatal

Salvino 11-1-21 (Mary Ashley Salvino, Cybersecurity Lawyer and Privacy & Data Security Professional at Bloomberg Law, CIPP/US, CIPM, member of the DC Bar, JD City University of New York School of Law at Queens College, “ANALYSIS: How Will the FTC Get Its Privacy Mojo Back in 2022?” Bloomberg Law, 11-1-2021, https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-how-will-the-ftc-get-its-privacy-mojo-back-in-2022)

Leveraging Democratic Political Capital

The odds are likely that the FTC will seek to optimize and strengthen its authority via its new left-leaning leadership. Lawyers should keep an eye on how the FTC leverages and aligns political capital in a way that maximizes innovation and cooperation with Democrats in Congress. Be ready for a robust rulemaking effort by the FTC, accompanied by a strong push for uniform privacy legislation.

The confirmation of Alvaro Bedoya as an FTC commissioner will likely give the FTC new leadership and momentum to focus on alternative rulemaking in consumer privacy protection. Additionally, Lina Khan, the new FTC chairwoman, has expressed interest in forging new antitrust rules, which could extend to creating additional privacy rulemaking.

In terms of political calculus, a strengthened regulator faces the same bipartisan gridlock characterized by a divided Congress. Yet legal practitioners should be aware of a growing momentum on both sides of the aisle, seeking more stringent regulations on unbridled Big Tech firms, as well as emerging nonpartisan sentiments toward seeking protection for children online.

Exploring Unprecedented Funding Initiatives

On Sept. 14, the House Committee on Energy and Commerce voted to appropriate an unprecedented $1 billion over 10 years to the FTC to establish and operate a new privacy bureau. Such an infusion, if passed by Congress, would instantly transform the FTC’s ability to effectively regulate unfair or deceptive acts or practices relating to privacy, data security, and data abuses. To put this infusion into perspective, it is critical to compare to FTC’s privacy budget for 2021 ($13 million) to its overall budget of $351 million.

Looking forward to 2022, it is likely that continued political alignment will be necessary to reinforce (and perhaps even expand) the FTC’s data privacy enforcement power. However, proponents of the FTC funding boost will need to reckon with rigorous bipartisan scrutiny in the Senate, as well as fierce opposition skepticism by Republicans and centrist Democrats alike. At the very least, proposals will face serious funding trimming, and even full-throated opposition, by legislators concerned about agency overreach.

#### 4 – epistemology – prefer consilience of Kovacic’s expertise as former FTC Chair, principal-agent theory, AND empirical studies

Miller 5 (Gary J. Miller, Emeritus Professor of Political Science, Washington University in St. Louis, PhD University of Texas at Austin, “The Political Evolution of Principal-Agent Models,” Annual Review of Political Science, vol.8, 2005, pp.203-225, DOI: 10.1146/annurev.polisci.8.082103.104840)

For principal-agency theorists, bureaucratic independence and congressional “dominance” are observationally equivalent as far as monitoring and sanctions are concerned. We should see little of either if bureaucrats are independent; but we should also see little if bureaucratic behavior is shaped by congressionally imposed incentives. Therefore, it is necessary to look beyond monitoring and sanctions to bureaucratic outputs, to determine if they can be shown to vary with congressional preferences. In the case of the Securities and Exchange Commission, Weingast argues that its imposition of deregulation was in response to congressional representation of the interests of large institutional investors. With respect to the Federal Trade Commission (FTC), Weingast & Moran (1983) show more convincingly that the ideological preferences of the Senate and the subcommittee chairman (as measured by Americans for Democratic Action scores) were significantly associated with the FTC’s emphasis over time on consumer-oriented credit (p. 789). In other words, a more conservative Senate led to a less consumer-oriented FTC.

Although neither of these empirical forays could be regarded as the final word on the subject, Weingast’s articles constitute an enormous contribution to the study of congressional oversight and public bureaucracy by exemplifying quantitative research directed at precise questions (e.g., what are the political and other determinants of bureaucratic outputs?) derived from rigorous theory. Almost singlehandedly, these articles raised the bar for academic research in the area of bureaucracy. Weingast (1984) offers the “congressional dominance” hypothesis: “The mechanisms evolved by Congress over the past one hundred years comprise an ingenious system for control of agencies that involves little direct congressional monitoring of decisions but which nonetheless results in policies desired by Congress” (p. 148).

#### Empirics prove bank lobbies sink biden nominees

Flitter 21 Emily Flitter, 10-5-2021, "Bank Groups Unite Against Biden’s Pick for Key Regulatory Post," New York Times, https://www.nytimes.com/2021/10/05/business/banks-occ-omarova.html

Ideological divisions had already scuttled the chances of two other candidates to lead the Office of the Comptroller of the Currency, but Ms. Omarova seemed to have something to offer both sides. She had specialized in banking law at a large corporate law firm and worked at the Treasury Department during a Republican administration, while as a Cornell Law School professor she explored ideas for revamping the financial system to increase its stability.

Expectations for Republican support were never high. But the most damaging blowback has come from somewhere else: the banks themselves.

Across the board, banks and their trade groups, including the American Bankers Association, which counts the big banks among its members, and the Independent Community Bankers of America, which represents the smallest institutions, have been sounding alarms about Ms. Omarova.

## FTC PC

### AT: N/L – FTC PC Fake

#### FTC PC is true and determines Congressional backlash

Kovacic 14 (William E. Kovacic, Former FTC Commissioner, Global Competition Professor of Law and Policy, The George Washington University Law School; David A. Hyman, Former FTC Special Counsel, H. Ross & Helen Workman Chair in Law and Professor of Medicine, University of Illinois; “Why Who Does What Matters: Governmental Design and Agency Performance;” October 2014, George Washington Law Review, Vol. 82, No. 5, Accessed through HeinOnline, TM)

Combining functions also affects the size of an agency's political capital. In our experience, regulatory bodies are always accumulating or spending political capital. When agencies make policy choices and initiate specific matters, they are either spending or accumulating political capital. Combining functions that build political capital with functions that run political capital deficits may help an agency to perform functions that are important to the economy but are unpopular. In effect, one function cross-subsidizes the other. Conversely, an agency with policy duties whose implementation chronically yields political capital deficits will find it difficult to establish political allies, and [prevent] blunt political attacks that threaten its effectiveness.120

Branding considerations also help explain why agencies sometimes resist the assignment of new responsibilities, even when the new function would be accompanied by more resources or greater visibility.121 For the same reason, agencies seek to divest responsibilities that are seen to collide with their core responsibilities.122

## UQ

### Uniqueness – T/L

#### AND…

Phillips 3-4 (Jimm Phillips, Associate Editor at Communications Daily, covers telecommunications policymaking, formerly reported at the Washington Post and the American Independent News Network; and Karl Herchenroeder, technology policy journalist and Associate Editor at at Communications Daily; “Long Senate Road Ahead for Sohn, Bedoya After Tied Commerce Votes,” Communications Daily, 3-4-2022, https://communicationsdaily.com/news/2022/03/04/Long-Senate-Road-Ahead-for-Sohn-Bedoya-After-Tied-Commerce-Votes-2203030070)

Democratic FCC nominee Gigi Sohn and FTC nominee Alvaro Bedoya cleared an initial confirmation hurdle Thursday after the Senate Commerce Committee voted 14-14 on both picks, but they still face a long road to floor approval, said lawmakers and other officials in interviews. Panel Democrats uniformly backed Sohn and Bedoya, but all Republicans opposed them. Six of the 14 Republicans attended the executive session, fulfilling expectations they wouldn’t boycott the meeting (see 2203020076). The committee also tied 14-14 on Consumer Product Safety Commission nominee Mary Boyle. It advanced National Institute of Standards and Technology director nominee Laurie Locascio and International Trade Administration nominee Grant Harris on voice votes.

“We’ll see what happens” in the full Senate, Commerce Chair Maria Cantwell, D-Wash., told reporters after the vote. “We need functioning” operations at the FCC and FTC, something not possible while both entities remain in 2-2 deadlocks. The Thursday votes mean neither Sohn nor Bedoya is automatically advanced out of Commerce, but they give Senate Majority Leader Chuck Schumer, D-N.Y., an opportunity to have floor votes to discharge the committee from further consideration of the nominees and bring them to the floor. The Senate could then hold votes on invoking cloture and final confirmation.

“We moved them” now in hopes the Senate will be able to prioritize votes on both nominees “soon,” perhaps before the Judiciary Committee acts on Supreme Court nominee Ketanji Brown Jackson, Cantwell said. “We’ll have to see” whether that’s possible. “Obviously you can see, just like [Senate Commerce] today, you’ve got to get everybody in the Senate, at least on our side,” and “that’s not always as easy when people have illnesses and deaths in the family,” so it will require coordination, Cantwell said. Judiciary hearings on Jackson are expected to begin March 21 and committee Chairman Dick Durbin, D-Ill., is hoping a final confirmation vote can happen by April 8.

Senate Communications Subcommittee Chairman Ben Ray Lujan, D-N.M, helped secure the ties on Sohn and Bedoya by showing up to the meeting in person. It was his first official Hill appearance since he began his recovery from a January stroke that partially led to the committee’s delayed consideration of the nominees (see 2202010070). “I’m ready to work,” he told reporters after the vote. Lujan “was eager” to make his Senate return last week, but some within his team suggested he take more time to get back to full strength. “The compromise was let’s get back this week,” he said. It’s no “surprise” the return came in time for votes with Sohn and Bedoya since “I have been talking about the FCC and the FTC for some time, and also on the consumer protection side.”

Cantwell defended Sohn Thursday amid criticism from Commerce ranking member Roger Wicker of Mississippi, Sen. Ted Cruz of Texas and other Republicans. Sohn is unlikely to “actively participate in partisanship or even censorship” if confirmed to the FCC, Cantwell said before the vote: The nominee "certainly knows the rules at the FCC” given her past role as an aide to FCC Chairman Tom Wheeler. Cantwell called Bedoya the “right person” to carry out the FTC’s mission. She told reporters she’s pleased Sen. Kyrsten Sinema of Arizona, the only committee Democrat who hadn’t publicly backed Sohn before Thursday, ultimately voted for the nominee but wouldn’t assign any motives for the move. Sinema’s office didn’t comment.

“I do appreciate [Sohn’s] willingness to be responsive and to engage with the members of this committee," including a second confirmation hearing last month (see 2202090070), "but unfortunately, this committee's vetting process has clarified that she is not the right choice to fill this vacancy at the FCC,” Wicker said. Republicans cited several concerns as reasons to oppose Sohn, including the nominee’s candor over her role as a board member for Locast operator Sports Fans Coalition in a shift in the settlement of broadcasters’ lawsuit against the shuttered rebroadcaster, and her social media comments about conservative media outlets.

Republicans similarly criticized Bedoya for his Twitter activity linking the Trump administration to white supremacy, which caused them to oppose the nominee during a December markup (see 2112010043). Wicker said he remains concerned by the “frequency” of Bedoya’s public, “divisive views” on policy matters, rather than “using a more measured, unified tone.” There’s been a “troubling trend of politicization” at the FTC unseen in the past, casting doubt Bedoya will bring the “cooperative spirit” needed at the agency, Wicker said.

Partisan Path Forward

The Biden administration “has ways of getting their troops” within the Senate Democratic caucus “in line,” but there’s still no guarantee either Sohn or Bedoya will clear the divided 50-50 chamber, Wicker told us. Support for Sohn in particular has become a “blood oath test … for loyalty” among Senate Democrats, said Communications ranking member John Thune, R-S.D. “I think they really worked hard to whip everybody” on the Democratic side “into line. If they could vote their state’s interest, I think you could argue a very different conclusion” might have happened Thursday.

“I would think if you’re a rural Democrat, if you’re” someone like Sen. Joe Manchin, D-W.Va., a Wednesday letter from former Sen. Heidi Heitkamp, D-N.D., on “Sohn’s actions and attitudes toward rural broadband could be very problematic,” Thune told us. “If they discharge” Sohn and Bedoya from Commerce’s jurisdiction “and the Democrats can hold their caucus together” and ensure all 50 of their senators are present “they could get confirmed, but if any one of those Democrats is persuaded” by some of the arguments against the nominees, it could pose problems. Sohn's supporters and opponents will likely focus the most attention on lobbying Manchin in the weeks ahead since he has been a perennial Democratic swing vote, lobbyists told us. Manchin's office didn't comment.

Sohn “has made numerous public statements that call into question whether she will work to bring broadband to all rural Americans expeditiously,” Heitkamp said in a Medium post. She in part cited Sohn’s 2020 House Communications Subcommittee testimony that “policymakers have focused disproportionately on broadband deployment in rural areas of” the U.S. (see 2001290052). “Sohn has also been a longtime advocate of ‘overbuilding,’ spending taxpayer dollars to build government-run networks in areas that already have service. This drains resources that should otherwise be going toward those Americans, overwhelmingly in rural areas, that have no service options.”

Lujan is hopeful Sohn and Bedoya will get 67 or 68 votes on the Senate floor, which would be in line with the chamber’s level of support last year for the Infrastructure Investment and Jobs Act (see 2108100062). “When we’re building out broadband in America, if we don’t get the FCC and the FTC ready to roll ... it’s not going to get done,” he said.

Sen. Amy Klobuchar of Minnesota and other Commerce Democrats we spoke with believe the committee’s tied votes on Sohn and Bedoya provide a clear if prolonged opening for their confirmation. “It’s going to take additional time” given the need for three floor votes instead of the two usually needed for nominees who can’t move via unanimous consent, said Sen. Jon Tester of Montana. “But there is a pathway to get that done, unlike” for a group of Federal Reserve nominees the Banking Committee Republicans have temporarily held up by boycotting committee meetings.

Getting floor time for Sohn and Bedoya is “going to be a challenge,” but Thursday’s results are a step forward, said Sen. Brian Schatz, D-Hawaii: “We’ll have a full complement eventually" at both the FCC and FTC, "but we’re going to have to wedge in these nominations as soon as possible. Republicans aren’t going to make it easy for us, but now that [Lujan] is back, we have the votes.”

Holds Ahead

Commerce Republicans during and after the Thursday meeting confirmed they plan to place holds on Sohn and Bedoya. A hold prevents the Senate from moving a nominee via unanimous consent, so placing them on Sohn and Bedoya won’t hurt their prospects, Hill aides and lobbyists told us. The level of GOP opposition to both nominees has always made it likely that floor votes would be necessary to confirm them, the aides and lobbyists said.

Senate IP Subcommittee ranking member Thom Tillis, R-N.C., confirmed to us he still plans to place a hold on Sohn, as he has long threatened (see 2112010043). If anything, “I’ve doubled down” in opposition to Sohn, Tillis said. “We’re talking about someone who’s wanting to rob intellectual property" via Sohn's Locast role, so "I’m working hard to make sure we have opposition” sufficient to sink her confirmation.

“There’s certainly widespread concern about the direction” of the FTC under Chair Lina Khan, but Sohn and Bedoya “are both extreme nominees, so there’s particular concern about both of them,” Cruz said. “It will take presumably every single Democrat to force” Sohn’s confirmation “and I hope at least one Democrat is concerned about protecting freedom of speech … about not allowing government power to be used for censorship.” Cruz hopes “at least one Democrat cares about rural America and listens” to Heitkamp’s concerns and “cares about ethics and transparency. All of those are disqualifying issues. We’ll see if the Democrats choose to vote party line and put partisan politics above principle.”

## AT: Impact Turn

### AT: !/N – Industrial Ag Good – T/L

#### Crop loss and shocks are inevitable from extreme weather, but shifting to sustainability solves

Morris 16 – Katlyn S. Morris, PhD Candidate in the Department of Plant & Soil Science at the University of Vermont, and Gabriela Bucini, PhD student at the Natural. Resource Ecology Laboratory (NREL) of Colorado State University, “California’s Drought as Opportunity: Redesigning U.S. Agriculture for a Changing Climate”, Elementa Science, https://www.elementascience.org/articles/10.12952/journal.elementa.000142/

Introduction

Climate change is affecting the production and profitability of agricultural systems, and this is expected to continue in the future. Projections show increased temperatures, changes in precipitation cycles, greater frequency of extreme weather events such as hurricanes and droughts, decreased topsoil moisture, and shifting pest populations (Vergara et al., 2014). In California, USA, the sustained drought of 2011–2016 has demonstrated one such effect of climate change that is expected to be more common. Drought cost California’s agricultural industry $1.5 billion in 2014, based on losses in crop revenue, livestock value, and the cost of groundwater pumping (Howitt et al., 2014). Economic loss in California’s agricultural sector is likely to continue based on projected climate and continued water shortages.

How can these agricultural losses and costs be minimized? What examples exist of agricultural systems that withstand drought, increased temperatures, flooding, and pest pressure? What is needed to replicate these resilient farm systems, in terms of agricultural policy, economic incentives, and cultural acceptance? We argue that this moment represents an opportunity to shift the existing agricultural paradigm in the United States to plan for long-term functionality in a changing climate. Hence, California’s drought can be seen as an opportunity in that it forces consumers, farmers, and policymakers to recognize the limits to natural resource use and to transform the current U.S. agricultural policy framework. Willingness to enact necessary policy changes to avoid a food and water crisis will require public pressure and support, farmer engagement, and collaboration across different levels of governance (local, state, national) and across different sectors of government (agriculture, water, natural resources).

Focusing on water restrictions as the primary means to arrive at a target level of water use is an incomplete approach to natural resource management, one which is distracting from a more fruitful conversation about truly sustainable agriculture. Setting water use limitations based on actual recharge rates is an approach that focuses on reaching a target, but the other critical piece is to address the questions: (1) How will agriculture achieve the goal of limiting water use without compromising food production? and (2) How can farmers and land users build resilience in their system to prepare for the future? An essential move is to redesign the agricultural systems that are built upon unsustainable practices, which will require forward-thinking policies that reflect a commitment to this paradigm shift.

Below, we review examples of resilient agroecosystems around the world, many documented within the field of agroecology. We then highlight an example of agroecology applied at a national scale due to policies and support from the French government. We propose that governmental support is needed in the U.S. to help California’s agricultural sector withstand and adapt to future water shortages, and to incentivize and promote the widespread adoption of sustainable agriculture.

Agroecology and agroecosystem resilience

Agroecology is “the application of ecological concepts and principles to the design and management of sustainable agroecosystems” (Gliessman, 1998), including maximizing nutrient cycling, minimizing external inputs, and conserving soil, water and energy. Agroecology is an approach that integrates ecological science with other scientific disciplines and knowledge systems (e.g. local, indigenous) to guide research and actions towards the sustainable transformation of our current agrifood system (Méndez et al., 2013).

Complex and diverse agricultural systems are less vulnerable to extreme weather events such as droughts and floods, and thus are overall more resilient to climate change (IPES, 2016). Many agroecological practices help build stable soils, which in turn are better able to maintain soil moisture during droughts and are less susceptible to erosion from storms and flooding (Magdoff and Van Es, 2000). Soils with high levels of organic matter have higher water-retention capacity, which maximizes the water available to plants during and following rainfall events (Hudson, 1994; Altieri et al., 2015). Soil organic matter can be maintained with crop residue application, cover cropping, and reduced tillage, leading to crop yield improvements and drought resistance (Lal, 2009). The evidence that agroecological practices build climate resilience has been analyzed for coffee farms in the tropics, which are highly vulnerable to climate extremes (Morris et al., in review), and has shown that shaded coffee agroforestry systems increase microclimate control, retain soil moisture, minimize erosion, increase nutrient use efficiency, maximize yields, and provide pest and disease control. In Brazil, incorporation of crop residues on coffee farms increased soil organic matter and soil water retention capacity, reduced soil temperature, and allowed better root system distribution (Camargo et al., 2010). In Costa Rica, coffee intercropped with leguminous trees (Inga densiflora) had higher water infiltration rates and less water runoff than coffee monocultures (Cannavo et al., 2011), while in Uganda, coffee agroforestry plots had 2.6 t C/ha more soil organic Carbon and significantly higher bulk density than coffee monocultures (Tumwebaze and Byakagaba, 2016).

Agroecology for resilience

Resilience refers to a system’s capacity to rebound after absorbing a disturbance (Cutter et al., 2008). Resilience can be viewed as an outcome, in which a system or population is able to cope with a hazard, or a process in which learning is continually applied to improve decisions and capacity. Coping capacity is the ability to respond to an occurrence of harm and to avoid or minimize negative effects (Saldaña-Zorrilla, 2008). Coping strategies may provide immediate relief but are not long-term adaptation strategies. Adaptive capacity is the ability to gradually transform in order to adjust to change. A key element of increasing the adaptive capacity of farms is building agroecosystem resilience to withstand climate extremes, such as drought and floods, and to maintain or recover their productive capacity with limited losses and costs. Many farmers around the world cope with and prepare for climate change by incorporating agrobiodiversity and soil conservation practices. They minimize crop loss through increased use of drought tolerant local varieties, water harvesting, mixed cropping, agroforestry, and soil conservation practices (Altieri and Toledo, 2011). Agricultural biodiversity helps cushion farms from shocks such as extreme weather events (Jarvis et al., 2007). Incorporating spatial and temporal diversity on farms can enhance beneficial biotic interactions and support a suite of ecosystem services beyond simple short-term production (Kremen et al., 2012; Mijatović et al., 2013). These ecosystem services, including erosion control, microclimate control (Laderach et al., 2010), pollination (Ricketts, 2004), and pest control (Scherr and McNeely, 2008) serve to support and sustain the healthy functioning of agroecosystems (Tilman et al. 2002).

Observations of agricultural resilience in the last several decades reveal that farms with healthier soils and higher agricultural biodiversity are better able to rebound after extreme climatic events. Cover cropping, the application of compost or manure, no till, agroforestry, fallow periods, and riparian buffers accumulate soil organic matter, increase soil water-holding capacity, and thus increase drought resistance for crops (Kremen and Miles, 2012). A 21-year study in Switzerland showed 20–40% higher water-holding capacity in organically-managed soils than conventionally-managed soils (Maeder et al., 2002). A 31-year field trial in Ontario demonstrated that increasing the complexity of crop rotations and minimizing tillage resulted in more consistent yields in periods of extreme weather conditions (Gaudin et al., 2015). A study conducted in Central American hillsides after Hurricane Mitch showed that farmers who used agroecological practices such as cover cropping, intercropping and agroforestry had 40% more topsoil on average and experienced 49% lower incidence of landslides than their conventional monoculture neighbors (Holt-Gimenez, 2002). In Chiapas, Mexico, more vegetatively complex coffee farms suffered less landslide damage from Hurricane Stan than simplified systems (Philpott et al., 2008). Diversification of a corn-soybean rotation to include perennial crops in the U.S. Corn Belt resulted in soil and water conservation and soil nutrient retention, as well as a reduction in agrochemical use without effects on yield or profitability (Liebman et al., 2013). These examples demonstrate the potential for agroecological practices to increase farm resilience.

#### Their evidence is industry propaganda that you should disregard

Ikerd 17 – John E. Ikerd, 5/31/2017. Professor Emeritus of Agricultural & Applied Economics University of Missouri Columbia. College of Agriculture, Food and Natural Resources. “Our Chemical-Dependent, Profit-Driven, Industrial Ag Complex is Not Going Quietly,” In These Times, http://inthesetimes.com/rural-america/entry/20177/farm-policy-corporate-power-industrial-agriculture-sustainablity-nixon.

In an attempt to stem the tide of growing public concern, the industrial agricultural establishment has mounted a nationwide propaganda campaign designed to, in their words, “increase confidence and trust in today’s agriculture.” The board members of one front group, the U.S. Farmers and Ranchers Alliance, include the American Farm Bureau Federation, John Deere as well as major agricultural commodity organizations. Board members Monsanto and DuPont have each pledged $500,000 per year to the campaign.

A recent study by Friends of the Earth, an international network of environmental organizations, documents similar “front groups” that have been spending more than $25 million per year to polish the tarnished public image of industrial agriculture. This doesn’t include the campaigns of individual industrial agricultural apologists that are carried out through public schools, 4-H and Future Farmers of America, local civic clubs, and state and local mass media. That said, the agricultural establishment seems to consider their PR campaign as little more than a “holding action” against growing public concerns. They are using their political power to establish legislative protections that would prevent effective regulation.

All 50 states already have some form of right-to-farm law, but they must be strengthend. The early laws, beginning in the 1980s, were enacted to minimize the threat to nuisance litigation and prohibitive state and local government regulation of “normal farming practices.” Current political initiatives, however, allow the agricultural establishment to define “industrial farming practices” as a legally protected economic right. Industrial agriculture's advocates know it's vulnerable to growing public concerns and they're doing everything in their power to protect it.

The agricultural establishment has essentially abandoned their earlier strategy for demanding that regulation of industrial agriculture be based on “sound science.” They seem to understand that the scientific evidence supporting the growing public concerns is now clear, compelling, even overwhelming. I personally think it has become misleading to cite a few specific studies when there is so much scientific information documenting the environmental, social, economic, and public health problems associated with industrial agriculture. I have started relying on meta-studies, where scientists or teams of scientists review dozens or hundreds of credible studies and draw logical, generalizable conclusions.

### AT: !/N – Industrial Ag Good – Land Conversion

#### Sustainable ag doesn’t cause land conversion and industrial ag makes the impact inevitable

Kimbrell 3 – Andrew Kimbrell, JD, Executive Director at the Center for Food Safety, “The Myth: Industrial Agriculture Benefits the Environment and Wildlife”, Fatal Harvest: The Tragedy of Industrial Agriculture, 1-4-2003, http://www.keepmainefree.org/myth5.html

Industrial agriculture is the largest single threat to the earth's biodiversity. Fence-row-to-fence-row plowing, planting, and harvesting techniques decimate wildlife habitats, while massive chemical use poisons the soil and water, and kills off countless plant and animal communities. Industrial agriculture’s mythmakers have been so successful in their efforts to shape opinion that they must believe we’ll swallow just about anything. They now assure us that intensive farming methods that rely on chemicals and biotechnology somehow protect the environment. This myth, as illogical as it may sound to an informed reader, is increasingly widespread in America today and is increasingly accepted as valid. What’s worse, agribusiness is saturating the media with misleading reports of the purported ecological risks of organic and other environmentally sustainable agricultural practices. A typical claim of the industrial apologists is that the industrial style of agriculture has prevented some 15 million square miles of wildlands from being plowed under for “low-yield” food production. They continuously assert that the biggest challenge of the 21st century is to increase food yields through modern advances in agricultural science, which include the genetic engineering of commercial food crops. They also claim that if the world does not fully embrace industrial agriculture, hundreds of thousands of wildlife species will be lost to low-yield crops and ranging livestock. There is a plethora of evidence that busts this myth. At the outset, the idea that sustainable agriculture is low-yield and would result in plowing under millions of square miles of wildlands is simply wrong. Relatively smaller farm sizes are much more productive per unit acre — in fact 2 to 10 times more productive — than larger ones, according to numerous government studies. In fact, the smallest farms, those of 27 acres or less, are more than ten times as productive (in terms of dollar output per acre) than large farms (6,000 acres or more), and extremely small farms (4 acres or less) can be over a hundred times as productive. Additionally, in contrast to industrial agriculture, sustainable or alternative agriculture minimizes the environmental impacts of farming on plants and animals, as well as the air, water, and soil, often without added economic costs. The simple use of composted organic manures is a cost-effective alternative to chemical fertilizers, and increases soil microbiology and fertility, decreases erosion, and over the long term helps preserve wildlife habitats. Organic and diversified farming practices increase the prevalence of birds and mammals on farmlands and ensure biological diversity for the planet. In sum, in terms of preserving and augmenting soil productivity and the biodiversity of the planet, small-scale sustainable agriculture is far more beneficial and efficient than its industrial counterpart. Moreover, instead of being a boon to the environment as the myth proclaims, industrial agriculture is currently the largest single threat to the earth's biodiversity. There are two primary reasons for this: the devastation of wild species caused by chemical use, and the destruction of wildlife habitat from industrial agriculture's inefficient fence-row-to-fence-row plowing, planting, and harvesting techniques

. Chemicals and the Environment Pesticide use — endemic to industrial agriculture — has been clearly identified as a principal driving force behind the drastic reduction of biodiversity on America's farmlands. According to Tracy Hewitt and Katherine Smith of the Henry Wallace Institute, there are no fewer than 50 scientific studies that have documented adverse environmental effects of pesticide use on bird, mammal, and amphibian populations across the United States and Canada. The Virginia Department of Game and Inland Fisheries, for example, found that at least 6 percent of the breeding population of bald eagles along the James River were killed annually by insecticide poisonings. Professor David Pimentel estimates that 672 million birds are affected by pesticide use on farmlands and 10 percent of these — 67 million — die each year. In Texas, where some 15 million acres of croplands are treated with pesticides, tens of thousands of migratory waterfowl come in direct contact with the treated grains, risking sickness and ultimately death. Between 1977 and 1984, half of all the fish killed off the coast of South Carolina were attributed to pesticide contamination. These are only a few of the many tragic examples of wildlife destruction in the United States alone. Chemical fertilizers — which are also a key component of industrial agriculture — pose an even greater risk to soil and water quality, threatening biodiversity and wildlife populations around the globe. Aquatic and marine life are especially vulnerable to the tons of residues from chemically treated croplands that find their way into our major estuaries each year. In the Chesapeake Bay, native sea grasses, fish, and shellfish populations have declined dramatically in number in the last few decades due to extremely high nitrogen and phosphorous levels caused by the excessive use of chemical fertilizers. According to Kelley R. Tucker of the American Bird Conservancy, use of inorganic fertilizers also tends to reduce overall plant species diversity on farmlands, allowing farm edges to be dominated by only one or a few types of plants. Bird populations suffer as a result because they are highly dependent upon the variety of insects that are supported by diverse, native landscapes. Habitat Destruction In addition to the environmental damage caused by chemical pesticides and fertilizers, the huge monocultured fields characteristic of industrial agriculture have dramatically reduced a number of wildlife populations by transforming habitats, displacing populations of native species, and introducing non-native species. Among countless other wild plants and animals, important game species such as prairie chickens, bobwhite quail, cottontail rabbits, and ring-necked pheasants have been greatly reduced or eliminated in areas of industrial agriculture. Diversified farming techniques, on the other hand, incorporate numerous varieties of plants, flowers, and weeds, and encourage the proliferation of various wildlife, insect, and plant species. No myth can hide the fact that decades of industrial agriculture have been a disaster for the environment. Its chemical poisoning has caused eco-cide among countless species. And it has resulted in irreversible soil loss, reduction in soil and water quality, and the proliferation of non-native species that choke out indigenous varieties. Without question, the tilling, mowing, and harvesting operations of industrial agriculture have affected, and continue to catastrophically destroy, wildlife and soil and water quality. By contrast, sustainable and organic farming methods result in the reduction of land under the plow and the increase of biodiversity and wildlife on farmlands and beyond.