# NEG Wiki Doc---Fullertown R2

# 1NC

## OFF

### 1NC – T – Private

#### The ‘private sector’ is not controlled by the state

Thomas Brock 20, Investopedia, “Private Sector,” 12/25/20, https://www.investopedia.com/terms/p/private-sector.asp

What is the Private Sector?

The private sector is the part of the economy that is run by individuals and companies for profit and is not state controlled. Therefore, it encompasses all for-profit businesses that are not owned or operated by the government. Companies and corporations that are government run are part of what is known as the public sector, while charities and other nonprofit organizations are part of the voluntary sector.

#### Utilities are owned by the public

#### Vote neg:

#### Limits and ground---they explode the topic to infinite non-private actors that avoid core DAs like econ

### 1NC – T – Judicial Exemption

#### The aff removes a pseudo-exemption --- that doesn’t “expand the scope” --- vote neg for limits they explode the topic --- limiting it to actual statutory exemptions provides enough aff flex

ARENA 11 --- AMEDEO ARENA, Associate Professor of European Union Law at the School of Law of the University of Naples, “Institute for International Law and Justice Emerging Scholars Papers”, IILJ Emerging Scholars Paper 19 (2011) (A Sub series of IILJ Working Papers) Finalized 01/18/2011, https://iilj.org/wp-content/uploads/2016/08/Arena-The-Relationship-Between-Antitrust-and-Regulation-in-the-US-and-in-the-EU-2011.pdf

According to a recent survey, approximately 20 percent of the US economic activities are to some degree exempted from antitrust law.22 Federal statutory antitrust exemptions can be divided into proper “exemptions”, which entail immunity from antitrust rules, and “pseudo-exemptions”, which merely imply a differential application of antitrust law. The “exemptions” category’ can be split up into two sub-categories: “full exemptions”, which exempt a given activity from all antitrust rules, and “partial exemptions”, which grant exemption only from certain antitrust rules.

Full exemptions are, for the most part, a creature of their time, a period ranging from the 1907 Bankers’ Panic to the mid-1940s. Indeed, only five of them are still in force.2’ In view of the broad scope of those immunities, in all five instances the legislature provided for oversight of the exempted sectors through a regulatory scheme enforced by a governmental agency, commission, or board.24 In some cases, however, the scope of regulation turned out to be narrower than that of antitrust immunity. For example, the Secretary of Commerce is supposed to police fishermen’s agreements against excessive pricing, yet apparendy it has never engaged in any real regulatory oversight.23

Turning to the nineteen partial exemptions currently in force,26 the discrepancy between the scope of the exemption and that of regulator}\* oversight is even greater, possibly because those exemptions authorize only specific conducts otherwise prohibited by antitrust law, thus mitigating the need for comprehensive regulatory oversight. The typical regulator}- scheme set out in those statutes consists in an obligation to submit the agreements eligible for exemption to a regulatory authority. The intensity of the assessment carried out by the relevant authority, however, varies considerably. As per the Need-Based Educational Aid Act, coordination on need-based financial aid programs, for instance, is not subject to regulator}- review at all.2 Under the Defense Production Act, the allocation of markets for military materials in time of national emergency is subject to approval by the Secretary of Defense, which must withdraw the immunity if it establishes that the “action was taken for the purpose of violating antitrust law”.28 Between those extremes, the ICC Termination Act provides for that the Surface Transportation Board must approve price-fixing agreements concerning the rates of household moves under a “public interest” standard;29 in addition, the Board can require compliance with “reasonable conditions” to ensure that the agreement furthers transportation policy.30

Unlike full and partial exemptions, the eight pseudo-exemptions in force do not bring economic activities outside the scope of antitrust provisions to subject them to sector-specific regulation, but rather modify the substantive standards, the remedies, or the forum of “general” antitrust law, thus creating “special” antitrust rules.3’ While pseudo-exemptions are generally not accompanied by regulatory schemes, in some cases the “special” antitrust rules themselves can be regarded as regulatory lato sensu.

ii) Judge-made Implied Antitrust Immunities and Regulation-Related Defenses

### 1NC – FERC

#### The Federal Energy Regulatory Commission should lower energy prices.

#### FERC has jurisdiction over the energy market---green.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

B. The Unique Nature of the Electricity Market and the Greater Potential for Market Abuse

The electricity market is different from any other competitive market in a way that makes it hard to control. This makes the electricity industry particularly prone to market power abuse by individual utilities.45 The wholesale electricity market is currently under FERC's jurisdiction.46 That means that private utilities are required to file their tariffs with FERC for its review and approval.47 During the approval process, FERC reviews the market share of the utility in order to determine whether the utility possesses the market power necessary to manipulate the market.48 Market power means the power of a single firm to drive prices upwards without losing its consumers.49 In its extreme form, market power leads to monopoly.50 Monopolies hurt consumers because they produce too little and charge too much.51

Currently, FERC employs the Federal Guidelines developed by the DOJ and the FTC for nonelectricity markets as a benchmark for the critical market share under which the utility is incapable of exercising market power.52 This market set by DOJ and FTC stood at twenty percent.53 What FERC does not account for is that the unique characteristics of the electricity market "directly translate into enhanced market power for generators and traders holding much smaller market shares than 20%."54 The nature of the electricity market is such that when the right conditions are met, even a utility with as little as one percent of the market share can exercise significant market power by withholding capacity and driving the prices upwards.55

#### They can set rates

Federal Register N.D. (Federal Register, “Federal Energy Regulatory Commission;” https://www.federalregister.gov/agencies/federal-energy-regulatory-commission)

The Federal Energy Regulatory Commission (FERC) is an independent agency within the Department of Energy which regulates the interstate transmission of electricity, natural gas, and oil. FERC has retained many of the functions of the Federal Power Commission, such as setting rates and charges for the transportation and sale of natural gas and the transportation of oil by pipelines, as well the valuation of such pipelines. FERC also reviews proposals to build liquefied natural gas terminals and interstate natural gas pipelines as well as licensing hydropower projects. FERC is composed of five members appointed by the President of the United States with the advice and consent of the Senate. FERC Commissioners serve 5-year terms and have an equal vote on regulatory matters. One member is designated by the President to serve as both Chairman and FERC's administrative head.

### 1NC – Court Ptx

#### SCOTUS will avoid sweeping ruling in West Virginia v. EPA – a broad ruling wrecks climate response and turns the case

Farah 11-1 [Niina H. Farah, E&E News legal reporter, 11-1-2021 https://www.eenews.net/articles/what-the-supreme-courts-move-means-for-epa-climate-rules/]

The Supreme Court may be poised to put new guardrails on the Biden administration’s climate agenda after justices agreed last week to consider the extent of EPA’s authority to regulate carbon emissions.

The court sent shock waves through the legal world when it agreed Friday to consider a consolidated challenge from Republican-led states and coal companies. The challenge stemmed from a federal court ruling that struck down a Trump-era regulation gutting EPA’s climate rule for power plants (E&E News PM, Oct. 29).

When the justices issue their ruling in the EPA case, which is expected by next summer, the decision could provide the first indication of how the court’s new 6-3 conservative majority will approach questions of the federal government’s role in curbing global climate change.

“This is likely to result in one of the most significant environmental rulings the court has ever reached,” said Robert Percival, director of the Environmental Law Program at the University of Maryland’s law school.

The court’s decision could place new limits on how expansively EPA can interpret its authority to use the Clean Air Act to address climate change.

Friday’s order coincided with the beginning of global climate negotiations at the 26th Conference of the Parties, or COP, in Glasgow, Scotland. It also comes as Congress is negotiating a Democratic spending package that would pump more than $500 billion into addressing climate change. The Biden administration’s goal is to cut U.S. greenhouse gas emissions in half by 2030 and put the electricity sector on a path to zeroing out carbon emissions by 2035.

West Virginia Attorney General Patrick Morrisey (R) praised the justices’ decision to review the ruling earlier this year by the U.S. Court of Appeals for the District of Columbia Circuit, which scrapped the Trump administration’s Affordable Clean Energy rule and handed the Biden team a clean slate to draft a new regulation for coal-fired power plant emissions (Greenwire, Jan. 19).

“This is a tremendous victory for West Virginia and our nation. We are extremely grateful for the Supreme Court’s willingness to hear our case," Morrisey said in a statement Friday.

"This shows the Court realizes the seriousness of this case and shares our concern that the D.C. Circuit granted EPA too much authority," he continued. "Given the insurmountable costs of President Biden’s proposals, our team is eager to present West Virginia’s case as to why the Supreme Court should define the reach of EPA’s authority once and for all."

White House national climate adviser Gina McCarthy said yesterday that the administration believes the high court will uphold EPA’s ability to regulate carbon emissions across the electricity sector.

"The courts have repeatedly upheld the EPA’s authority to regulate dangerous power plant pollution," she told reporters on a call. She noted that the appeals court had struck down the Trump-era rule that would have weakened power plant regulations.

McCarthy said the White House is confident that the Supreme Court will rule in a way that affirms that “EPA has not just the right but the authority and responsibility to keep our families and communities safe from pollution."

Critics of the Supreme Court decision to hear the case said that in most instances, federal courts wait for an agency to enact a rule before they weigh in on a legal controversy around the agency’s power to regulate.

"In that sense, this seems like a power grab. But we don’t know yet," said Bethany Davis Noll, executive director of the State Energy & Environmental Impact Center at New York University School of Law.

Instead of reinstating the Obama-era Clean Power Plan — which interpreted the "best system of emission reduction" to include emissions trading or shifting generation to renewable energy — EPA under Biden opted to start from scratch. The power sector has already surpassed the 2015 Clean Power Plan’s emissions reductions target a decade early.

The agency under Biden has yet to publish a draft proposal, and observers says it may now choose to wait for the Supreme Court’s decision before writing a new carbon rule.

EPA did not respond to a request for comment on the Supreme Court’s order but agency Administrator Michael Regan defended the agency’s authority Friday on Twitter.

"Power plant carbon pollution hurts families and communities, and threatens businesses and workers," he tweeted. "The Courts have repeatedly upheld EPA’s authority to regulate dangerous power plant carbon pollution."

Agency powers

Several observers said the Supreme Court’s eventual ruling in the case could be limited to power plants, while others predicted a bigger blow to emissions regulation for other sectors.

"The issue just gets dumped back in Congress’ lap," said Jeff Holmstead, a partner at the law and lobbying firm Bracewell LLP, of the possible consequences of the court’s limiting EPA’s power.

"Any kind of meaningful regulatory program could be well off the table," he said.

A more concerning — but less likely — possibility would be if the high court used the case to more broadly undermine the regulatory authority of federal agencies.

"It’s possible that what the court is seeking to review here is Section 111(d) itself," said Michael Burger, executive director of Columbia Law School’s Sabin Center for Climate Change Law.

He referred to the part of the Clean Air Act that EPA used to regulate carbon emissions from existing power plants under former presidents Obama and Trump.

"If that’s the case, the broadest threat here is not just about climate change, or about EPA’s authority, but it’s about the power of the court to review congressional authorizations of agency action," he said.

In a worst-case scenario, the high court could give itself authority to tell Congress "in almost any instance" that it has to be more specific about delegating authority to agencies, Burger added.

In their petitions to the Supreme Court, the coal companies and states targeting EPA’s power to regulate raised concerns about whether Congress had clearly given the agency the authority to address utility emissions on a broad, systemwide basis.

The challengers also asked the justices to weigh in on whether Congress could lawfully allow EPA to act on emissions under Section 111(d) of the Clean Air Act under the non-delegation doctrine, which says that lawmakers cannot hand off their legislative authority to executive agencies. The Supreme Court’s conservative wing has expressed interest in reviving the long-dormant legal doctrine.

That argument could threaten not only Biden’s rule proposals, but also existing regulations.

#### The plan causes institutional balancing – SCOTUS couple’s the plan’s expansion of agency enforcement with an equal and opposite ruling in West Virginia constraining agencies

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

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

[FOOTNOTE]

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

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

#### Climate change causes extinction

Beard 21 --- S.J.Beard et al, Centre for the Study of Existential Risk, University of Cambridge, United Kingdom, “Assessing climate change’s contribution to global catastrophic risk”, Futures Volume 127, March 2021, https://www.sciencedirect.com/science/article/pii/S0016328720301646?casa\_token=by8gGKumaf0AAAAA:xT\_EyVIl562OPSIjbbfew8mdQsUCUq7tOJ7mF9HGjwOsZ8M4mfRkXkVIU1r7xYpO1ghAEKK2

While most of the impacts of climate change so far have fallen within the range of what was experienced during the Holocene, the rate of change is faster than in the Holocene and we are now beginning to see climate change push beyond these boundaries. In the latest edition of the planetary boundaries’ framework, climate change is placed in the zone of increasing risk, implying that while this boundary has been breached, there remains some potential for normal functioning and recovery (Steffen et al., 2015). It thus lies between what the authors identify as the ‘safe zone’ and other ‘high risk’ transgressions, such as disruption to the biochemical flows of nitrogen and phosphorus and loss of biosphere integrity.

As part of their discussion of BRIHN Baum and Handoh (2014) note that climate change is the planetary boundary for which the risk to humanity has received most meaningful consideration and they suggest that this attention is deserved. Yet little research attention has been paid to climate change’s extreme or catastrophic effects. Kareiva and Carranza (2018) argue that, despite currently falling outside of the area of high risk, climate change has the clear potential to push humanity across a threshold of irreversible loss by “changing major ocean circulation patterns, causing massive sea-level rise, and increasing the frequency and severity of extreme events… that displace people, and ruin economies.” Even if humanity was resilient to each of these individual impacts, a global catastrophe could occur if these impacts were to occur rapidly and simultaneously.

One scenario that has received comparatively more attention is that of the global climate crossing a tipping point that would trigger environmental feedback loops (such as declining albedo from melting ice or the release of methane from clathrates) and cascading effects (such a shifting rainfall patterns that trigger desertification and soil erosion). After this point, anthropogenic activity may cease to be the main driver of climate change, making it accelerate and become harder to stop (King et al., 2015).

Other scenarios can be discerned from the numerous historical cases in which the modest, usually regional, climatic changes experienced during the Holocene have been implicated in the collapse of previous societies, including the Anasazi, the Tiwanaku, the Akkadians, the Western Roman Empire, the lowland Maya, and dozens of others (Diamond, 2005, Fagan, 2008). These provide a precedent for how a changing climate can trigger or contribute to societal breakdown. At present, our understanding of this phenomena is limited, and the IPCC has labelled its findings as “low confidence” due to a lack of understanding of cause and effect and restrictions in historical data (Klein et al., 2014). Further study and cooperation between archaeologists, historians, climate scientists and global catastrophic risk scholars could overcome some of these limitations by identifying how the impacts of climate change translate into social transformation and collapse, and hence what the impacts of more rapid and extreme climatic changes might be. There is also the potential for larger studies into how global climate variations have coincided with collapse and violence at the regional level (Zhang, Chiyung, Chusheng, Yuanqing, & Fung, 2005; Zhang et al., 2006). However, these need to be interpreted and generalized with care given the differences between pre-industrial and modern societies.

Societies also have a long history of adapting to, and recovering from, climate change induced collapses (McAnany and Yoffee, 2009). However, there are two reasons to be sceptical that such resilience can be easily extrapolated into the future. First, the relatively stable context of the Holocene, with well-functioning, resilient ecosystems, has greatly assisted recovery, while anthropogenic climate change is more rapid, pervasive, global, and severe. Large-scale states did not emerge until the onset of the Holocene (Richerson, Boyd, & Bettinger, 2001), and societies have since remained in a surprisingly narrow climatic niche of roughly 15 mean annual average temperature (Xu, Kohler, Lenton, Svenning, & Scheffer, 2020). A return to agrarian or hunter-gatherer lifestyles could thus have more devastating and long-lasting effects in a world of rapid climate change and ecological disruption (Gowdy, 2020).7 Second, modern human societies may have developed hidden fragilities that amplify the shocks posed by climate change (Mannheim 2020) and the complex, tightly-coupled and interdependent nature of our socio-economic systems makes it more likely that the failure of a few key states or industries due to climate change could cascade into a global collapse (Kemp, 2019).

A third set of plausible scenarios stem from climate change’s broader environmental impacts. Apart from being a planetary boundary of its own, Steffen et al. (2015) point out that climate change is intimately connected with other planetary boundaries (see Table 1). Climate change is thus identified by the authors as one of two ‘core' boundaries with the potential “to drive the Earth system into a new state should they be substantially and persistently transgressed.” This transformative potential was elaborated on in subsequent work exploring how the world could be pushed towards a ‘Hothouse Earth’ state, even with anthropogenic temperature rises as low as 2 °C (Steffen et al., 2018).

The connection between climate change and biosphere integrity (the survival of complex adaptive ecosystems supporting diverse forms of life) is particularly strong. The IPCC is highly confident that climate change is adversely impacting terrestrial ecosystems, contributing to desertification and land degradation in many areas and changing the range, abundance and seasonality of many plant and animal species (Arneth et al., 2019). Similarly, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) has reported that climate change is restricting the range of nearly half the world’s threatened mammal species and a quarter of threatened birds, with marine, coastal, and arctic ecosystems worst affected (Diaz et al., 2019). According to one estimate, climate change could cause 15–37 % of all species to become ‘committed to extinction’ by mid-century (Thomas et al., 2004).

### 1NC – Section 5

#### The FTC should issue clear enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes prohibitions on nearly all anticompetitive business practices by the private sector that are currently exempted by the filed rate doctrine. The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

#### The FTC can utilize current authority without creating new prohibitions.

Khan ‘21

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

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

I. Background

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

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

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

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

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

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

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

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

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

### 1NC – K

#### 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”

### 1NC – States

#### Text: The 50 states and relevant territories should engage in multistate antitrust action and enforcement over prohibitions on nearly all anticompetitive business practices by the private sector that are currently exempted by the filed rate doctrine.

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

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

In 2020, as in 1890, states attorneys general have much to offer antitrust enforcement. Illegal anticompetitive conduct is often concentrated locally, rather than nationally, making state-level enforcement especially appropriate. 202Link to the text of the noteMany states have antitrust statutes (or bodies of state law) that allow for prosecutions that the federal laws do not. 203Link to the text of the noteState governments often will have better knowledge of local economic conditions than distant agencies in Washington, making them natural choices for [\*210] antitrust enforcement. 204Link to the text of the noteAnd if the federal government fails to enforce the antitrust laws, state attorneys general often have the ability and political incentives "step up" to "fill the void." 205Link to the text of the note

Yet, if the early failure of antitrust federalism holds a single lesson, it is that even such compelling political, historical, and economic imperatives are, without more, insufficient to spur state antitrust action. Unless state prosecutors have the capacity and incentives to take on the antitrust challenge, they will not act.

What does this mean for today's state antitrust enforcers? On one hand, the years since 1890 have seen several innovations that substantially mitigate the problem of prosecutorial capacity. Multistate organizations like the National Association of Attorneys General (NAAG) have allowed for coordination and information sharing between attorneys general on antitrust matters, thus reducing the costs and burden of such cases. 206Link to the text of the noteLikewise, the rise of multistate antitrust suits brought jointly by dozens of states allows for cost-and-capacity-sharing. 207Link to the text of the noteChanges in federal law, like the Hart-Scott-Rodino Act of 1976, created an economic incentive for states to pursue antitrust cases by codifying the ability of state attorneys general to sue as parens patriae and by offering states treble damages when they prevail (a strong economic incentive if ever there was one). 208Link to the text of the note

Going further, the federal government has sometimes expressly subsidized state antitrust efforts, as with the supplemental funding offered in the Crime Control Act of 1976. 209Link to the text of the noteAnd in some states, the capacity of the attorney general's office has increased to levels inconceivable at the turn of the century: New York's Attorney General, for instance, supervises over 1,800 employees, 210Link to the text of the notewhile California employs a staggering [\*211] 4,500. 211Link to the text of the notePerhaps because of these shifts, it is unsurprising that in recent times at least some state attorneys general have heeded the call to enforce state and federal antitrust laws, from local investigations of healthcare consolidation 212Link to the text of the noteto multistate actions against Silicon Valley behemoths like Apple and Amazon. 213Link to the text of the note.

## Adv 1

### Squo solves

#### FERC Regulations solve

Johnston 21 (Kimberly Johnston, Partner, Power & Utilities, Ernst & Young LLP, June 15th, 2021, “Landmark FERC decision opens market for distributed energy resources” Ernst & Young, <https://www.ey.com/en_us/power-utilities/ferc-opens-market-for-distributed-energy-resources>) MULCH

Today’s regulatory framework is based on the traditional centralized energy delivery model which is becoming outdated given the uptick in carbon-free technologies. The Federal Energy Regulatory Commission (FERC) and state public utility commissions continue to focus on modernizing regulations to promote a level playing field for new market participants, approve the rate recovery of pilot programs and offer incentives for grid performance enhancements. Co-developing the regulatory framework needed for tomorrow’s carbon-free economy is critical to a successful transition to the future customer-centric, decentralized and carbon-free operating model.

There is going to be a lot more demand for electricity, both with electrification and demand for cleaner resources. We have to figure out policies that will hopefully promote a greater investment in the transmission grid to facilitate access to cleaner resources. Rick Glick, FERC Chairman

One recent monumental regulatory policy change occurred with the issuance of Order No. 2222 by FERC. This Order will essentially open the wholesale electricity markets to distributed energy resources. This is historic because the policy is ahead of the carbon-free technologies that will transform the way energy is produced and delivered across America.

FERC Order 2222

On September 17, 2020, FERC issued a landmark ruling, Order No. 2222, requiring Regional Transmission Organizations (RTOs) and Independent System Operations (ISOs) to amend their tariffs to allow distributed energy resources (DERs) to fully participate in the wholesale electricity markets and compete alongside traditional energy market players.

Order No. 2222 is intended to remove market barriers to participation of DERs in the RTO/ISO wholesale electricity markets, which represents two-thirds of customers across the US energy market. The Order enhances market competition while ensuring that RTO/ISO wholesale electricity markets produce just and reasonable rates.

Order No. 2222 presents a huge opportunity for investor-owned utilities and key stakeholders to design the future carbon-free, distributed operating model with the customer at the center.

Each RTO/ISO grid operator must submit FERC compliance filings by July 19, 2021. A filing must propose an implementation plan tailored for its region and must outline how the final rule will be implemented in a timely manner.

### 1NC – A2: Grid Impact

#### Solar storms thump

Ellet 16 [Ross Ellet, graduated from Purdue University with his Meteorology degree and a minor in Communications and Sociology 9-26-2016 http://www.13abc.com/content/news/Lawmakers-plan-for-extreme-solar-storm-394857441.html]

When it comes to extreme weather, some storms are just out of this world. Solar storms that develop 93 million miles away could change our way of life. GPS, cell phones and electricity are things we depend on every day, but huge eruptions of plasma from the sun could shut down satellites and overpower the electric grid. “Realistically it will happen again” says Dr. Michael Cushing. Cushing is an associate professor of physics and astronomy at the University of Toledo. While extreme solar explosions are rare, one big event in 1859 produced an aurora that turned the night into day. It was powerful enough to push the northern lights south over Hawaii and Cuba. The solar storm also brought down the country’s telegraph network. Cushing said, “They were sparking on some of the poles, some of the telegraph operators got shocked, and it even started some fires.”

Michigan senator Gary Peters said, “If that happened in 1859 you can imagine what would of happen today. In fact Lloyds of London calculated that if you had an event like occurred in 1859, you could have up to 40 million people without power perhaps up to 2 years without power, and the cost to the economy could be in the trillions of dollars, that is with a T." Senator Peters introduced the Space Weather Research and Forecasting Act back in April. It’s expected to be voted on in the house and senate before the year ends.

Peter’s said, “It is not a question of if, but when. The last one occurred 150 years ago and scientists believe these occur about every 150 years so we may be nearing that again which is why we need to prepare for it." The biggest wake-up call happened in July of 2012 when a solar superstorm missed earth’s orbit by just 9 days. Scientists with NASA believe the blast was just as powerful as the 1859 event.

Extreme geomagnetic storms have occurred all throughout history, but they wouldn’t have made much of an impact without electricity. Today the world is connected like never before. If the next massive solar storm sneaks up without warning, the results could be dramatic. If passed, the bill would open up better communication between space weather forecasters. It would also lead to more research and better forecast tools.

#### Grid resilient

Berkeley 10 [Alfred R. Berkeley III and Mike Wallace 10/19/10 (national infrastructure advisory council, “A Framework for Establishing Critical Infrastructure Resilience Goals”http://www.dhs.gov/xlibrary/assets/niac/niac-a-framework-for-establishing-critical-infrastructure-resilience-goals-2010-10-19.pdf)]

Although there are many definitions of resilience, the Council used the definition developed in our 2009 study as the basis of this overall study. In its simplest form, infrastructure resilience is the ability to reduce the magnitude and/or duration of disruptive events. This definition was used to develop a common construct to describe and organize resilience practices in the electricity sector. This resilience construct, originally conceived by resilience expert Stephen Flynn, consists of four outcome-focused abilities: (1) Robustness—the ability to absorb shocks and continue operating; (2) Resourcefulness—the ability to skillfully manage a crisis as it unfolds; (3) Rapid Recovery—the ability to get services back as quickly as possible; and (4) Adaptability—the ability to incorporate lessons learned from past events to improve resilience. This construct allows universal concepts of resilience to be understood and shared across critical infrastructure sectors and between industry and government. Using this construct as an organizing guide, we uncovered a rich and diverse array of practices used by electric and nuclear companies to manage a variety of risks within both regulated and competitive business environments. For the companies in these sectors, practicing resilience is already a core operating principle and an integral part of their commitment to customers, shareholders, and communities. Millions of dollars are invested in minimizing the likelihood and impact of outages. The electricity and nuclear sectors make extensive use of emergency and continuity planning, risk modeling, disaster drills, tabletop exercises, operator training, safety features, redundant and backup systems, advanced technologies, innovative organizational structures, mutual assistance, supply chain management, and other methods to manage a variety of everyday and uncommon risks. These practices are woven into the business functions, operations, and culture of both sectors. Companies we spoke with use every opportunity to incorporate new lessons from past events and drills to improve their resilience. Overall, the sectors have a remarkable record of safety, reliability, and efficiency while managing operational risks.

### 1NC – Climate Impact

#### Global and non-federal cuts solve

Harder 20 [Amy Harder is an energy and climate change reporter at Axios. She is the author of the weekly Harder Line column and she covers the industry’s biggest news stories 12-7-2020 https://www.axios.com/biden-paris-deal-five-years-fd6b5b28-0b18-4794-b112-5776dbafccf4.html]

Much of the world has moved forward, despite Trump’s retreat.

Europe has been pushing aggressive climate policy over the last five years, and recent comments suggest it may not let America lead like it has in the past.

“Europe will be at the forefront of brokering ambitious commitments,” said European Commission President Ursula von der Leyen in comments last month. “The U.S. is also well placed to support us.”

This fall, China, South Korea and Japan all announced aggressive goals to drastically cut emissions over the next three decades.

These announcements, critical given that they’re coming from energy-hungry Asia, were made in anticipation of a Biden presidency, said one former U.S. diplomat.

“The analysis they were reading was that Biden would win. I think if the analysis had been the other way, you wouldn’t have seen these announcements forthcoming.”

— Jonathan Pershing, who worked on the Paris deal under Obama

The intrigue: The official U.S. commitment to the deal is not expected immediately in the new administration, according to Pershing and other experts familiar with the process.

That's because it takes time — and technical experts — to determine what policies are possible and how much emissions reduction would result.

"There will likely be an announcement of intent and then delivery of the plan within the first year," Pershing said.

By the numbers: Given the limits of Biden’s domestic political agenda, the pledge is likely to lean more heavily than ever before on non-federal action, which there's been a lot of over the last four years.

Action by states, cities and private business could cut U.S. emissions up to 37% by 2030 compared to 2005 levels, according to a 2019 report by a consortium of environmental groups and former state leaders.

#### Not existential AND their models fail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### It’s too late – even pricing in Biden’s emissions reduction commitments, they’re insufficient to prevent catastrophic warming impacts – prefer new, post-Glasgow scientific assessments

Rannard 11-9 (Georgina Rannard, journalist at the BBC; internally citing a report by Climate Action Tracker; “COP26: World headed for 2.4C warming despite climate summit – report,” BBC News, 11-9-2021, <https://www.bbc.com/news/science-environment-59220687>)

Despite pledges made at the climate summit COP26, the world is still nowhere near its goals on limiting global temperature rise, a new analysis shows.

It calculates that the world is heading for 2.4C of warming, far more than the 1.5C limit nations committed to.

COP26 "has a massive credibility, action and commitment gap", according to the Climate Action Tracker (CAT).

The Glasgow summit is seen as crucial for curbing climate change.

But the prediction contrasts with optimism at the UN meeting last week, following a series of big announcements that included a vow to stop deforestation.

COP26 is expected to finish this week.

The projection comes as the UK's Met Office warns that a billion people could be affected by fatal heat and humidity if the global average temperature rises by 2C above pre-industrial levels.

The report by Climate Action Tracker looks at promises made by governments before and during COP26.

It concludes that, in 2030, the greenhouse gas emissions that warm the planet will still be twice as high as necessary for keeping temperature rise below 1.5C degree.

Scientists say that limiting warming to 1.5C will prevent the most dangerous impacts of climate change from happening.

The COP summit held in Paris in 2015 laid out a plan for avoiding dangerous climate change which included "pursuing efforts" to keep warming under 1.5C.

But when governments' actual policies - rather than pledges - are analysed, the world's projected warming is 2.7C by 2100, suggests Climate Action Tracker. The Tracker is backed by a number of organisations including the prestigious Potsdam Institute for Climate Impact Research in Germany.

"This new calculation is like a telescope trained on an asteroid heading for Earth. It's a devastating report that in any sane world would cause governments in Glasgow to immediately set aside their differences and work with uncompromising vigour for a deal to save our common future," said Greenpeace International's executive director Jennifer Morgan.

However, the world's outlook has improved since the Paris climate summit in 2015 when Climate Action Tracker estimated the policies put the planet on track to warm by 3.6C.

Climate Action Tracker blames "stalled momentum" from governments for limited progress towards cutting greenhouse gas emissions by 2030.

It says new promises by the US and China to reach net zero have slightly improved its forecasting on temperature rises. But it concludes that the quality of most government's plans to limit climate change is very low.

Reaching net zero involves reducing greenhouse gas emissions as much as possible, then balancing out any remaining releases by, for example, planting trees - which remove CO2 from the atmosphere.

More than 140 governments have promised to reach net zero, covering 90% of global emissions.

But Climate Action Tracker says only a handful have plans in place to reach the goal. It analysed the policies of 40 countries and concluded that only a small number are rated "acceptable", covering a fraction of the world's emissions.

"If they have no plans as to how to get there, and their 2030 targets are as low as so many of them are, then frankly, these net zero targets are just lip service to real climate action," said Bill Hare, chief executive of Climate Analytics, one of the groups behind the Tracker.

The main driver of the gap between promises and projections is continued coal and gas production, the organisation concludes.

## Adv 2

#### No impact – Biz con’s irrelevant

Doll 16 – Bob Doll, Chief Equity Strategist at Nuveen Asset Management, “Despite Lackluster Growth, Equities Remain Attractive”, Financial Advisor, 8-9, <http://www.fa-mag.com/news/despite-lackluster-growth--equities-remain-attractive-28409.html>

July’s jobs report confirmed that U.S. economic growth remains on track. 255,000 new jobs were created last month, the unemployment rate remained at 4.9% and average hourly earnings climbed 0.3%.2 These stronger-than-expected results raise the chances of a Fed rate hike before year end. Long-term U.S. growth has been lackluster and will likely remain so. Since the start of the recovery seven years ago, real gross domestic product growth has averaged just over 2%.3 Tailwinds such as the improving labor market and low mortgage rates have been counteracted by headwinds such as low business confidence. We expect these crosscurrents will persist. Nominal growth has been particularly weak this cycle. Compared to previous expansions, nominal growth (which includes the effects of inflation) has been extremely low.3 Since nominal growth is determined by both unit growth and pricing power, this trend has been a primary culprit behind recent weakness in corporate earnings. Increases in government spending are a mixed bag for the economy. After several years of a sequester-enforced decline in spending, government spending has increased in 2016.4 While this boosts economic growth, additional regulations and increased control of private resources through stringent health insurance rules limit the economy’s ability to promote higher standards of living. China’s economy is slowing, but the rate should be manageable. Fears of a Chinese hard landing have been a persistent worry for investors. Chinese authorities have been slowly shifting the country’s economy away from exports and investment spending and toward domestic consumption. We believe Chinese growth is slowing from the officially reported 10% level of a few years ago toward something closer to a more-sustainable 5% by the end of this decade.5 Despite Risks, the Global Economy Remains Resilient Since the current economic recovery began, investors have contended with a number of economic issues. The most recent risk has been the extent to which the Brexit vote might trigger widespread contagion. So far, it appears that outside of slowing growth in the United Kingdom, effects have been limited. Investor worries are now focused on Italy’s banking and political systems. Italian banks are struggling with a rash of bad loans on their balance sheets and thin capital buffers. This storm has been brewing for some time, and coincides with the upcoming constitutional referendum that could reshape Italy’s political system. Investors are rightfully viewing the turmoil with caution. In addition, many are questioning the overall state of the world economy in light of rising geopolitical instability, consternation over the upcoming U.S. elections, questions about global monetary policy, relatively low business confidence and a renewed slump in oil prices. Yet, we believe the global economy has been, and should continue to be, resilient in the face of all of these risks. We believe global monetary policy remains supportive of growth and the global recovery will continue, especially in the United States.

#### No collapse – other countries fill in and IMF and fed can bailout

#### 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

#### U.S. not key

Molavi 11 – Afshin Molavi, Senior Fellow and Co-Director of the World Economic Roundtable at the New America Foundation, “US Economic Power is Part of a Healthier Global Order”, The National, 7-4, http://www.thenational.ae/thenationalconversation/comment/us-economic-power-is-part-of-a-healthier-global-order#full

Thus, the world faces the prospect of America slipping quietly into a "lost decade" of sluggish growth - of America sneezing and wheezing and coughing, but not facing a crisis moment. What will this mean for the world? Japan's growth throughout the 1970s and 1980s bolstered many of their Asian trading partners. Japan's demand was a boon. But Japan's lost decade in the 1990s did not stop the Asian tigers from rising. In some cases, countries such as South Korea and Taiwan even benefited from the Japanese slowdown, stealing away market share in key industries. The same may happen with an American "lost decade". A World Bank report in late 2009 noted that Latin American countries - the most exposed to American contagion - did not feel severe effects from the American crisis. The same goes for other emerging markets. So, perhaps the world will shrug off a steady American economic decline over the next five years. This is partly because the global economic pie is not a fixed size. As "the rest" rise, it grows. Thus, America controlled a quarter of the world's GDP in 1970 - roughly the same as today. But the pie is much bigger. Global GDP has tripled since 1970 and Asia today accounts for a quarter of global GDP. The pie is not only larger, but it is more balanced. Will there even be a "lost decade" after all? American corporations are sitting on large piles of cash. The problems with the economy have as much (perhaps more) to do with business confidence as with fundamentals. That could change. To be sure, the world is better off when America grows and produces and innovates. But if the declinists prove correct, then the cliché of "when American sneezes" will truly be tested once and for all. Or perhaps the world will be too busy to notice: emerging markets will be growing their middle classes, oil-rich Middle East states will be bolstering ties to Asia, and Chinese investments will flow across Africa and Latin America. And that sneezing $14 trillion (Dh51.4 trillion) economy would still be the envy of most countries around the world. We can put the cliché to rest: an American sneeze might not breed a global cold after all.

#### 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).”

#### Unfettered growth pushes biophysical limits to extinction

Pegram 21 (Tom, Associate Professor in Global Governance and Deputy Director of UCL Global Governance Institute, and Julia Kreienkamp, Researcher at the Global Governance Institute, “Global obsession with economic growth will increase risk of deadly pandemics in future,” 3/5/21, <https://theconversation.com/global-obsession-with-economic-growth-will-increase-risk-of-deadly-pandemics-in-future-156509)//NRG>

Importantly, COVID-19 was not a “black swan” event – an event that cannot be reasonably anticipated. As Mike Ryan, executive director of the World Health Organization’s emergencies programme, made clear in an impassioned address in February, COVID-19 is very much a human-made emergency. By continuing to privilege economic growth over environmental and social sustainability, “we are creating the conditions in which epidemics flourish … and taking huge risks with our future”. Human civilization is on a collision course with the laws of ecology. Experts have long warned of zoonotic diseases jumping the species barrier as a result of growing human encroachment on nature. A 2019 landmark global biodiversity assessment showed that species and ecosystems are declining at rates “unprecedented in human history”. Biodiversity loss is accelerating, driven by multiple interrelated forces, all of which are ultimately produced or greatly amplified by practices that push economic growth. These include deforestation, agricultural expansion and the intensified consumption of wild animals. Climate change often steals the headlines, but it is becoming increasingly clear that the prospect of mass biodiversity loss is just as catastrophic. Crucially, these two challenges are deeply interlinked. Global warming is putting massive pressure on many of our most diverse natural ecosystems. In turn, the decline of these vital ecosystems weakens their ability to store carbon and provide protection from extreme weather and other climate-related risks.

#### Accepting de-growth solves – existing mechanisms only lock in widespread *ecological* and *economic* crises

Jackson 19 (Tim Jackson, Professor of Sustainable Development at the University of Surrey and Director of the Centre for the Understanding of Sustainable Prosperity (CUSP), “The Post-growth Challenge: Secular Stagnation, Inequality and the Limits to Growth”, Ecological Economics, 156, 236–246, February 2019, doi:10.1016/j.ecolecon.2018.10.010)

A decade after the financial crisis, growth rates in advanced economies have still not returned to those experienced in the pre-crisis era. A long-term decline in the rate of labour productivity growth is one of the underlying factors contributing to this situation. Understanding that long-term decline is clearly vital. Debt overhang, shifting patterns of demand and the geo-politics of resource supply all play some contributing role. Perhaps the most troubling possibility is that the wide-spread technological advances facilitated by ready abundance of high-quality energy resources in the first seventy years of the 20th century are no longer available to advanced economies in the 21st. Evidence of a decline in the quality of some physical resources already exists. Sooner or later further declines are inevitable. As they arrive, they are likely to depress labour productivity growth still further. The critical question is how policy should respond to this not-so-new reality. The conventional response has been to look for conditions – technological, fiscal, monetary – to keep growth going, whatever the cost. The prevalent ‘rescue narrative’ relies on an assumption that with appropriate policy incentives, new technological breakthroughs will emerge and productivity growth will recover. Candidate ‘saviours’ in this rescue narrative are various. For some (NCE 2014 2017), innovation will arrive from investment in the same clean, low-carbon technologies that are needed to tackle climate change and offset resource depletion. For others (Ford, 2015; Avent, 2016), innovation will come from the emerging digital revolution: increased automation, robotisation, artificial intelligence. But to date, none of the productivity gains foreseen by these technologies have been manifest at the macroeconomic level and this latter world could lead to the ‘immiseration’ of labour (Susskind, 2017) and levels of inequality reminiscent of the worst scenarios outlined in the previous section. In historical perspective, it is clear that the advanced economies now stand at a distinct, and uncomfortable cross-roads. Two competing theories about how to maintain growth (Keynesianism and monetarism) have dominated macroeconomics over the last half century. Neither is adequate to the challenge of resolving current conditions. Developed in response to the Great Depression in the 1930's, John Maynard Keynes' macroeconomics saw a critical role for government in maintaining economic stability (Keynes, 1936). If supply potential was not enough to keep growth going (as Says had argued), governments could not rely on households and firms simply to go on spending during the hard times. They must play an active role in stimulating the economy to ‘kick-start’ growth again. The strategy worked, up to a point. It was exemplified in particular by Franklin D Roosevelt's ‘New Deal’ in the States. The subsequent ‘failure’ of Keynesianism to solve the problems of ‘stagflation’ during the oil crises led to a temporary disillusionment with the idea and in the early 1980s, western governments (predominantly led by the anglo-centric nations) abandoned Keynes and turned instead to monetarism – the brainchild of Chicago school economist Milton Friedman. Built on a neoliberal philosophy with a strong belief in the free market as the best regulator of human affairs, monetarism had no time for fiscal stimulus (or indeed with government intervention generally) and argued instead that the route out of low growth was to reduce the cost of money, so that firms would more easily invest in the productive capacity of the economy and households could fund any temporary constraints on spending through debt. These mechanisms for financial liquidity would free up the economy to grow again, allowing prices to fall and employment to bounce back. At first these policies seemed to be successful. In the wake of the oil crises, conditions improved. Greater liquidity spurred investment, restored levels of consumer demand and even (arguably) stimulated innovation in the energy sector which brought down the price of oil, for almost two decades. In the long run, however, things were not so simple. Loose monetary policy and tight fiscal policy were slowly creating increasing fragility in financial markets. Though they facilitated a continued reduction in public debt burdens, this only proved possible by transferring debt to the private sector. While interest rates were low and debt burdens were not too high, this didn't seem to matter much. But as more and more households accumulated more and more debt, the conditions for instability were accumulating. By the early 2000s, firms, banks and households had become ‘overleveraged’. The policy response was to pump more and more money into the system by lowering interest rates again and relaxing financial regulations even further. All it needed was a change in the rate of defaults on ‘subprime’ loans and the bubble would have to burst. This was the era of ‘easy money’, the ‘age of irresponsibility’ as then Prime Minister Gordon Brown called it, and it led inexorably to the financial crisis.8 ‘The question then arises,’ wrote Summers (2014, p68) ‘can we identify any stretch [in the last decades] during which the economy grew satisfactorily under conditions that were financially sustainable?.’ His answer, and indeed the answer of a number of other mainstream economists, was: no. Chasing growth through loose monetary policy in the face of challenging underlying fundamentals had led to financial bubbles which destabilised finance and culminated in crisis. Perhaps the most pernicious impact of this period of loose monetary policy – and indeed of the crisis itself – was the steady rise in inequality within advanced nations. There were several channels through which this acceleration occurred. In the first place, cheap money led to financial speculation. Those with access to capital could achieve substantial capital gains as asset prices rose. When wealth is already unequally distributed, this tendency leads directly to higher income inequality. As income inequality increases, it leads to excessive investment funds, because richer households tend to have a high propensity to save than poorer ones. This excess of savings leads to more speculation, pushing asset prices up again and accelerating inequality further. It is also likely to depresses growth, partly through the reduced spending power of poorer households and partly through the crowding out of investment in the real economy. Policy responses which attempt to stimulate investment by reducing the interest rate, end up making money cheaper and incentivising more speculation, fuelling a vicious cycle of rising inequality (

Credit Suisse, 2014, p34). But this cycle of rising inequality was by no means inevitable. Nor is it inevitable in the future. More correct would be to argue that rising instability (both social and financial) is the result of our persistent attempts to breathe new life into capitalism, in the face of underlying fundamentals that are now beginning to point in the opposite direction. Reversing the trend by raising the labour productivity growth rate through selective technologies is a highly uncertain strategy that may well intensify the environmental and social problems of the 21st century. By privileging the interests of the owners of capital over the interests of those employed in wage labour in the economy, it may be possible for short time to keep a certain kind of economic growth going. But the end result is a somewhat frightening sense that, as the Institute for Public Policy Research (IPPR, 2018) recently pointed out, when the next crisis hits there will be neither fiscal nor monetary room for manoeuvre. Reaching beyond these potentially destructive conditions is clearly challenging, but by no means impossible. There is an emerging (and increasingly timely) interest in ideas around de-growth (D'Alisa et al., 2014; Kallis, 2015; Van den Bergh, 2015) and in the economics of a ‘post-growth’ society (Cassiers et al., 2017; Blewitt and Cunningham, 2014; Jackson, 2009, 2017). These approaches tend to accept that beyond a certain point, and for a variety of reasons, relentless economic growth may be neither desirable nor indeed feasible. Whether for secular reasons, or from a decline in resource quality, or from the need to curtail damaging environmental impact, proponents of these ideas attempt to envision the social conditions (and economic implications) of a world in which, for the advanced economies at least, it is necessary to ‘manage without growth’ (Victor, 2008/2018). Perhaps the most interesting avenue that emerges from this exploration relates to the fundamental challenge which lies at the heart of it, the decline in labour productivity growth. Amongst the potential causes of such a decline lies one which carries the seeds of a new way of thinking about the role of enterprise and work in a post-growth society. Structural changes from primary (extractive) and secondary (manufacturing) towards tertiary (service) sector industries may be partially responsible for the transition towards a lower productivity growth (Nordhaus, 2006). Though often presented in conventional economics as a problem – for instance as the source of Baumol's (2012) ‘cost disease’ – there are certain service-based sectors which are both lighter (more sustainable) in material terms and contribute particular benefits in terms of the quality of life. These human services – particularly those based around care, craft and creativity – might well provide the clue to a lighter (more sustainable) economy capable of delivering a lasting prosperity without the need for economic growth.9 The US writer Wendell Berry (2008) once remarked that ‘human and earthly limits, properly understood, are not confinements, but rather inducements… to fullness of relationship and meaning’. Nowhere is this observation more true than in the context of the post-growth challenge facing the advanced economies in the 21st Century. That challenge, properly conceived, is not to pursue ever more desperate policies to regain the lost footings of a fossil-fuel driven hyper-productivity, but rather to create the conditions for an economy that works for everyone, within the constraints of a finite planet. As I have argued extensively elsewhere (Jackson, 2017), that task is precise, definable, pragmatic and achievable.

# 2NC---Fullertown R2

## CP---FERC

### 2NC---Condo

## Energy

### 2NC---UQ

### 2NC---AT: Grid !

#### Grid-destroying cyber attack inevitable-terrorists and states target grid

HSNW 16 (12-16-16 Homeland Security News Wire is the homeland security industry’s largest online daily news publication, authoritative, in-depth analysis and coverage of the day’s most important homeland security stories. It is an essential tool for busy executives, key decision makers and senior policy experts and those who wish to remain in the know, and make more informed security related decisions. Citing: Dr. Patricia Lewis, Research Director of the International Security Department at Chatham House; and Jan Eliasson, the deputy secretary-general of the United Nations. ““Nightmare scenario”: Nuclear power plants vulnerable to hacking by terrorists” <http://www.homelandsecuritynewswire.com/dr20161216-nightmare-scenario-nuclear-power-plants-vulnerable-to-hacking-by-terrorists> //LLP)

Security experts fear Fukushima-like disaster as terrorists use new technology to attempt attacks. The frequency and scope of cyberattacks on nuclear plants have increased dramatically, and experts say that a successful hack is now all but inevitable. They say that nuclear plant operators should focus more on preparing to contain and limit the damage when it does occur. Security experts fear Fukushima-like disaster as terrorists use new technology to attempt attacks. Jan Eliasson, the deputy secretary-general of the United Nations, told the Security Council that a nightmare scenario – that is, radioactive material being released from nuclear power stations subject to cyberattacks by terrorists – is not far-fetched. Eliasson said that “vicious non-state groups” were making efforts to acquire weapons of mass destruction (WMDs), and warned: “These weapons are increasingly accessible.” A hacking attack on a nuclear power plant would be a “nightmare scenario,” he added. NewsOK reports that terrorist groups such as ISIS and al-Qaeda have train to obtain WMDs, and ISIS operatives in Belgium had been following a scientist who worked at a nuclear power station, hoping to use him to gain access to the plant. Eliasson noted that technological advances such as 3D printing, the growing use of drones, and the increasing sophistication of cyberattacks have made it easier for terrorists to acquire deadly weapons. “Preventing a WMD attack by a non-state actor will be a long-term challenge that requires long-term responses,” Eliasson said. The UN convened the meeting to examine ways to prevent terrorists from getting hold of nuclear, chemical, and biological weapons. Dr. Patricia Lewis, Research Director of the International Security Department at Chatham House, told theIndependent a cyber-attack on a nuclear power station was “a real risk.” “There’s an idea that the systems are protected…and that is a myth. Every system has vulnerabilities. We are seriously straying into what sounds like science fiction but isn’t. We are there now,” she said. She added: “This isn’t just imagined – this is already going on.” Nuclear plants have already been subject to attacks. In 2009 an attack on an Iranian facility had disrupted its nuclear enrichment program. Plants in South Korea and Germany have also come under cyberattacks. These attacks were small, but bigger ones could have been disastrous. Lewis warned the worst case cyber-attack could potentially cause “a Fukushima-style scenario.” She said: “It is probably beyond the capabilities of a non-state armed group but it may be very possible for a state to do that. Energy companies really need to understand the threat better [because] they don’t yet. There are things going on that we don’t fully understand.” Experts worry that attacks aiming to disrupt nuclear power stations, could also be launched against nuclear weapons facilities. Lewis said: “When it comes to nuclear weapons the consequences are far higher. Even if the probabilities are lower, the risk is huge.” Attacks on nuclear power stations will not only release deadly radiation, but would also shut down the grid, wreaking economic havoc and risking public disorder, Lewis added. Cyberattacks on nuclear power plants may have different goals. Some may aim to obtain data about the way the plant works or information on personnel at the facility; others may be ransom attacks, threatening the plant operator with damage unless money is paid. Hacks may also see information about the layout and structure of nuclear reactors in preparation for a physical attack. The frequency and scope of cyberattacks on nuclear plants have increased dramatically, and experts say that a successful hack is now all but inevitable. They say that nuclear plant operators should focus more on preparing to contain and limit the damage when it does occur. Lewis said: “We need a different type of approach to cyber-security – one that doesn’t imagine that you can completely defend against attacks. “What we’re trying to do is introduce a culture where you…expect the attacks and build in resilience so that when they come it doesn’t really have much effect.”

#### Squirrels are an alt-cause.

Hern 16—A technology reporter for the Guardian [Alex, “The power grid's greatest enemy has four legs and a bushy tail,” The Guardian, 14 Jan 2016, <https://www.theguardian.com/technology/2016/jan/14/power-grid-cybersquirrel1-hackers-cyberwarfare>, accessed 24 Sep 2016]

Across the world blackouts are happening and power grids are being shut down. From Europe to America, and across Asia and Africa, we’re losing the cyberwar. But the enemy is not who you might think: it is **squirrels**.

While we’re busy worrying about hackers and rogue states, squirrels scamper into electricity substations and chew through power cables. **They’re the kamikaze troops in nature’s war against national infrastructure**.

To underscore just how dangerous these **furry villains** are, CyberSquirrel1 has been collecting all the examples of successful cyberwarfare from these rodents – as well as other animals, from birds to beavers and rats to snakes and racoons.

To date, they have verified 623 power outages which can be directly, publicly attributed to squirrels, as well as a further 347 that can be blamed on other animals. They add, though, that “there are many more executed ops than displayed on this map however, those ops remain classified”.

The site also tracks successful cyberwarfare carried out by nation states. It counts one: the Stuxnet computer worm that took out Iran’s nuclear facilities in 2009 and 2010, believed to be created by US and Israeli computer scientists. There have been other reported cyberattacks on national infrastructure, including one in Ukraine over Christmas, but the site’s creator points out that those can’t be verified as coming from nation states.

“Of all the claimed nation state cyber attacks that have impacted critical infrastructure that we have been made aware of such as the Brazil Blackouts, German Steel Plant event, and the Ukrainian power outages only the US-led Stuxnet operation can be confirmed at this time.” **Squirrels 623 – Nation states 1**.

The point, of course, is not that we should declare war on rodents, but that cyberwarfare remains a slightly overblown fear. State-sponsored hackers are out there, but for the most part they are content with going after softer and more valuable targets such as identity databases and financial information.

The site’s creator, an anonymous information security professional, said that their motivation for creating it was to flesh out what had already become longstanding observation among infosec circles. “There is tons of hype about how we are at so much risk from a devastating cyber attack, and yet we can’t even protect our infrastructure from squirrels, or birds or snakes.

“I decided to take it to the next level, and a few years ago created this account to document just how prevalent the squirrel menace actually was to illustrate the point”.

And rodents aren’t just a humorous comparison: the site’s creator points out that there’s a very real problem with **lack of coverage of squirrel attacks**, as well as **over-reporting** of cyberwarfare. For instance, one article they cite “claims 560 outages in 2015 in Montana alone caused by squirrels. I have news articles for two of them.” **The threat is real, and hidden**.

If there’s one point to take home, it’s that fears about cyberwarfare shouldn’t keep you up at night. “Of course there is some risk there,” CyberSquirrel1’s creator says. “Cyber security of the electric grid is important, but not at the levels that the cyberwar hawks have been preaching.”

**Squirrels, though. Those guys are dangerous**.

### 2NC – A2: Grid Impact – Resilient

#### Grid resilient —free market drives successful innovations

Cato 12 [Jason Cato “Experts: U.S. risk of demand-linked blackout low”, Cato is a syndicated columnist, 7/31/12, available online at <http://triblive.com/news/2304292-74/power-grid-demand-blackout-pjm-blackouts-dupont-kidd-megawatts-outages#ixzz28GZ6Ao2K>, accessed 10/3/12//Thur]

Energy experts say it’s unlikely the nation’s power grid could experience an outage such as one in India on Monday that disrupted life for 370 million people, largely because American operators in a competitive marketplace keep aging infrastructure in better shape.¶ Even on a smaller scale, “you can never say never, but the risk of it happening here is extremely low,” said Gregory Reed, an electric power engineering professor at the University of Pittsburgh.¶ The power grid crash in Northern India delayed trains, closed many businesses for the day and forced hospitals and airports to use backup power sources. Crews worked for 15 hours to restore power on a day when predawn temperatures reached 90 degrees or hotter, officials said. They pegged high demand as a likely cause of the blackout but planned an investigation.¶ A systemwide, demand-related blackout hasn’t occurred for several decades in the regional grid operated by PJM Interconnection of Valley Forge that includes Western Pennsylvania and all or parts of 13 states and Washington, though weather-related outages have affected some of its 60 million residents, spokeswoman Paula DuPont-Kidd said.¶ “We’re built and designed to try to offset any risk we know of to prevent (blackouts) from happening,” she said.

#### No prolonged blackouts---restoration is fast.

Stockton 16—Managing Director of Sonecon LLC, former Assistant Secretary of Defense for Homeland Defense and Americas’ Security Affairs, Stanford University Senior Research Scholar at the Center for International Security and Cooperation, and a PhD from Harvard [Paul, “Superstorm Sandy: Implications for Designing a Post-Cyber Attack Power Restoration System,” Johns Hopkins Applied Physics Laboratory, p. 1-2, <http://www.jhuapl.edu/ourwork/nsa/papers/PostCyberAttack.pdf>]

Sandy packed a one-two punch for electric infrastructure. On the night of October  29,  2012, Sandy made landfall near Atlantic City, New Jersey, as a post-tropical cyclone. Over the next three days, the impacts of Sandy could be felt from North Carolina to Maine and as far west as Illinois. With an unprecedented storm surge in the affected areas, there was especially severe damage to the energy infrastructure. Peak outages to electric power customers occurred on October  30 and 31 as the storm  proceeded inland from the coast, with  peak outages in all states totaling over 8.5  million, as reported in the Department of Energy (DOE) Situation Reports. Much of the damage was concentrated in New York and New Jersey, with some customer outages and fuel disruptions lasting weeks.1 The second punch landed on November 7, 2012, as a nor’easter impacted the Mid-Atlantic and Northeast with strong winds, rain and snow, and coastal flooding. The second storm caused power outages for more than 150,000 additional customers and prolonged recovery.2

The combined damage to critical electricity substations, high-voltage transmission lines, and other key grid components was massive—as would be expected from the second-largest Atlantic storm on record.3 Some major utilities in the region suffered from gaps in their preparedness to conduct repair operations on the scale that Sandy required.4 Overall, however, utilities restored power with **remarkable speed and effectiveness** in most areas hit by the superstorm. Despite the vast number of grid components that needed to be repaired or replaced and the fallen trees and other impediments that restoration crews encountered, within two weeks of Sandy’s landfall, utilities had restored power to 99 percent of customers who could receive power.5

The mutual assistance system in the electric industry was the linchpin for this success. Although the linepeople and other power restoration personnel in utilities across Sandy’s impact zone performed admirably, no single utility retains the restoration capabilities needed to repair the damage caused by a storm on that scale. Achieving such restoration preparedness would be extraordinarily expensive. Moreover, given the rarity of such catastrophic events, the amount of money required to enable a utility to restore power on its own would be difficult to justify as a prudent expense to state public utility commissions (PUCs), shareholders, or elected officials responsible for approving such expenditures.6 Instead, utilities have built a highly effective voluntary system of mutual support, whereby utilities that are not at risk of being struck by a hurricane or other hazard can send restoration assets to those that are. The overall restoration capacity of the industry is **immense**; the mutual assistance system enables utilities to target support when and where specific utilities request aid.

Sandy highlighted the effectiveness of this system. Tens of thousands of mutual assistance personnel, including linepeople, engineers, vegetation crews, and support personnel provided by eighty electric utilities from across the United States, flowed in to the area to help the utilities hit by Sandy—by far the largest deployment of mutual assistance capabilities in US history.7 Utilities contributed these assets from the West Coast, the Midwest, and other regions far beyond the storm’s footprint. Now, drawing on the lessons learned from Sandy, utilities are expanding the mutual assistance system to bring to bear still greater restoration capabilities in future catastrophes.8

This system did not emerge by chance. For decades, hurricanes and other severe weather events have hammered utilities in the eastern and southern United States. Massive ice storms, wildfires, and other natural hazards have also inflicted wide-area power outages in other regions of the United States. In response, utilities gradually built up the mutual assistance system, developing increasingly effective governance and decision-making mechanisms to allocate restoration crews and other limited resources and prioritize assistance when multiple power providers requested help.9 Restoration crews have become as expert at line stringing, replacing power poles, and performing other functions for partner utilities as they are for their own organizations. So that personnel stay sharp between events, utilities conduct frequent exercises that are modeled on the hurricanes and other hazards they typically face. They have also established mechanisms to reimburse each other for the cost of providing assistance and (together with state PUCs) have created special cost recovery mechanisms to help pay for restoration operations in severe storms.

Decades of experience also strengthened government support for power restoration after Sandy. When the superstorm hit, state National Guard personnel in New York, New Jersey, and other states were already prepared to perform well-established (and crucial) support functions at the request of their local utilities, including road clearance and debris removal to help utility repair crews reach damaged equipment. The Emergency Management Assistance Compact (EMAC) system enabled thirty-seven states outside the affected area to send thousands of additional Guard personnel to help to execute these missions.10 The National Response Framework (NRF) also provided time-tested mechanisms to coordinate the provision of government assistance.11 Moreover, as in the case of the power industry’s mutual assistance system, federal and state agencies have launched a wide array of initiatives to draw on lessons learned from the superstorm and strengthen support for power restoration in future catastrophic blackouts.

### 2NC---AT: Climate

#### Global and non-federal cuts solve

Harder 20 [Amy Harder is an energy and climate change reporter at Axios. She is the author of the weekly Harder Line column and she covers the industry’s biggest news stories 12-7-2020 https://www.axios.com/biden-paris-deal-five-years-fd6b5b28-0b18-4794-b112-5776dbafccf4.html]

Much of the world has moved forward, despite Trump’s retreat.

Europe has been pushing aggressive climate policy over the last five years, and recent comments suggest it may not let America lead like it has in the past.

“Europe will be at the forefront of brokering ambitious commitments,” said European Commission President Ursula von der Leyen in comments last month. “The U.S. is also well placed to support us.”

This fall, China, South Korea and Japan all announced aggressive goals to drastically cut emissions over the next three decades.

These announcements, critical given that they’re coming from energy-hungry Asia, were made in anticipation of a Biden presidency, said one former U.S. diplomat.

“The analysis they were reading was that Biden would win. I think if the analysis had been the other way, you wouldn’t have seen these announcements forthcoming.”

— Jonathan Pershing, who worked on the Paris deal under Obama

The intrigue: The official U.S. commitment to the deal is not expected immediately in the new administration, according to Pershing and other experts familiar with the process.

That's because it takes time — and technical experts — to determine what policies are possible and how much emissions reduction would result.

"There will likely be an announcement of intent and then delivery of the plan within the first year," Pershing said.

By the numbers: Given the limits of Biden’s domestic political agenda, the pledge is likely to lean more heavily than ever before on non-federal action, which there's been a lot of over the last four years.

Action by states, cities and private business could cut U.S. emissions up to 37% by 2030 compared to 2005 levels, according to a 2019 report by a consortium of environmental groups and former state leaders.

## Econ

### 2NC---AT: Econ !

#### Decline doesn’t cause war

Boehmer 10 (Charles R., Associate Professor of Political Science at the University of Texas El Paso, “Economic Growth and violent international conflict: 1875-1999,” Defence and Peace Economics, Volume 21, Issue 3, June)

The theory set forth earlier theorizes that economic growth increases perceptions of state strength, increasing the likelihood of violent interstate conflicts. Economic growth appears to increase the resolve of leaders to stand against challenges and the willingness to escalate disputes. A non-random pattern exists where higher rates of GDP growth over multiple years are positively and significantly related to the most severe international conflicts, whereas this is not true for overall conflict initiations. Moreover, growth of military expenditures, as a measure of the war chest proposition, does not offer any explanation for violent interstate conflicts. This is not to say that growth of military expenditures never has any effect on the occurrence of war, although such a link is not generally true in the aggregate using a large sample of states. In comparison, higher rates of economic growth are significantly related to violent interstate conflicts in the aggregate. States with growing economies are more apt to reciprocate military challenges by other states and become involved in violent interstate conflicts. The results also show that theories from the Crisis-Scarcity perspective lack explanatory power linking GDP growth rates to war at the state level of analysis. This is not to say that such theories completely lack explanatory power in general, but more particularly that they cannot directly link economic growth rates to state behavior in violent interstate conflicts. In contrast, theories of diversionary conflict may well hold some explanatory power, although not regarding GDP growth in a general test of states from all regions of the world across time. Perhaps diversionary theory better explains state behaviors short of war, where the costs of externalizing domestic tensions do not become too costly, or in relation to the foreign policies of particular countries. In many circumstances, engaging in a war to divert attention away from domestic conditions would seemingly exacerbate domestic crisis conditions unless the chances of victory were practically assured. Nonetheless, this study does show that domestic conflict is associated with interstate conflict. If diversionary conflict theory has any traction as an economic explanation of violent interstate conflicts, it may require the study of other explanatory variables besides overall GDP growth rates, such as unemployment or inflation rates. The contribution of this article has been to examine propositions about economic growth in a global study. Most existing studies on this topic focus on only the United States, samples of countries that are more developed on average (due to data availability in the past), or are based on historical information and not economic GDP data. While I have shown that there is no strong evidence linking military expenditures to violent interstate conflicts at the state level of analysis, much of the remaining Growth-as-Catalyst perspective is grounded in propositions that are not directly germane to questions about state conflict behavior, such as those linking state behavior to long-cycles, or those that remain at the systemic level. What answer remains linking economic growth to war once we eliminate military expenditures as an explanation? Considering that the concept of foreign policy mood is difficult to identify and measure, and that the bulk of the literature relies solely on the American historical experience, I do not rely on that concept. It is still possible that such moods affect some decision-makers. Instead, similar to Blainey, I find that economic growth, when sustained over a stretch of years, has its strongest effect on states once they find themselves in an international crisis. The results of this study suggest that states such as China, which have a higher level of opportunity to become involved in violent interstate conflicts due to their capabilities, geographic location, history of conflict, and so on, should also have a higher willingness to fight after enjoying multiple years of recent economic growth. One does not have to assume that an aggressive China will emerge from growth. If conflicts do present themselves, then China may be more likely to escalate a war given its recent national performance.

#### we’d survive nuke war

Denkenberger, et al, 17—Tennessee State University, Global Catastrophic Risk Institute (David, with D. Dorothea Cole, Mohamed Abdelkhaliq, Michael Griswold, Allen B. Hundley, and Joshua M. Pearce, “Feeding Everyone if the Sun is Obscured and Industry is ~~Disabled~~ [Shut Down],” International Journal of Disaster Risk Reduction 21, (2017), 284–290, dml)

A number of catastrophes could block the sun, including asteroid/comet impact, super volcanic eruption, and nuclear war with the burning of cities (nuclear winter). The problem of feeding 7 billion people would arise (the food problem is more severe than other problems associated with these catastrophes). Previous work has shown this is possible converting stored biomass to food if industry is present. A number of risks could destroy electricity globally, including a series of high-altitude electromagnetic pulses (HEMPs) caused by nuclear weapons, an extreme solar storm, and a super computer virus. Since industry depends on electricity, it is likely there would be a collapse of the functioning of industry and machines. Additional previous work has shown that it is technically feasible to feed everyone given the loss of industry without the loss of the sun. It is possible that one of these sun-blocking scenarios could occur near in time to one of these industry-disabling scenarios. This study analyzes food sources in these combined catastrophe scenarios. Food sources include extracting edible calories from killed leaves, growing mushrooms on leaves and dead trees, and feeding the residue to cellulose-digesting animals such as cattle and rabbits. Since the sun is unlikely to be completely blocked, fishing and growing ultraviolet (UV) and cold-tolerant crops in the tropics could be possible. The results of this study show these solutions could enable the feeding of everyone given minimal preparation, and this preparation should be a high priority now.

#### Conciliatory policies are more likely

Clary 15 – Christopher Clary, former International Affairs Fellow in India at the Council on Foreign Relations, Postdoctoral Fellow at the Watson Institute at Brown University, Adjunct Staff Member @ RAND Corporation, Security Studies Program @ MIT, country director for South Asian affairs in the Office of the Secretary of Defense, former Research Fellow @ the Harvard Kennedy School's Belfer Center for Science and International Affairs, former research associate in the Department of National Security Affairs at the Naval Postgraduate School, BA from Wichita State University and an MA from the U.S. Naval Postgraduate School, 2015 (“Economic Stress and International Cooperation: Evidence from International Rivalries,” Massachusetts Institute of Technology Political Science Department Research Paper No. 2015-­‐8, “Economic Stress and International Cooperation: Evidence from International Rivalries,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2597712)

Do economic downturns generate pressure for diversionary conflict? Or might downturns encourage austerity and economizing behavior in foreign policy? This paper provides new evidence that economic stress is associated with conciliatory policies between strategic rivals. For states that view each other as military threats, the biggest step possible toward bilateral cooperation is to terminate the rivalry by taking political steps to manage the competition. Drawing on data from 109 distinct rival dyads since 1950, 67 of which terminated, the evidence suggests rivalries were approximately twice as likely to terminate during economic downturns than they were during periods of economic normalcy. This is true controlling for all of the main alternative explanations for peaceful relations between foes (democratic status, nuclear weapons possession, capability imbalance, common enemies, and international systemic changes), as well as many other possible confounding variables. This research questions existing theories claiming that economic downturns are associated with diversionary war, and instead argues that in certain circumstances peace may result from economic troubles. Defining and Measuring Rivalry and Rivalry Termination I define a rivalry as the perception by national elites of two states that the other state possesses conflicting interests and presents a military threat of sufficient severity that future military conflict is likely. Rivalry termination is the transition from a state of rivalry to one where conflicts of interest are not viewed as being so severe as to provoke interstate conflict and/or where a mutual recognition of the imbalance in military capabilities makes conflict-causing bargaining failures unlikely. In other words, rivalries terminate when the elites assess that the risks of military conflict between rivals has been reduced dramatically. This definition draws on a growing quantitative literature most closely associated with the research programs of William Thompson, J. Joseph Hewitt, and James P. Klein, Gary Goertz, and Paul F. Diehl.1 My definition conforms to that of William Thompson. In work with Karen Rasler, they define rivalries as situations in which “[b]oth actors view each other as a significant politicalmilitary threat and, therefore, an enemy.”2 In other work, Thompson writing with Michael Colaresi, explains further: The presumption is that decisionmakers explicitly identify who they think are their foreign enemies. They orient their military preparations and foreign policies toward meeting their threats. They assure their constituents that they will not let their adversaries take advantage. Usually, these activities are done in public. Hence, we should be able to follow the explicit cues in decisionmaker utterances and writings, as well as in the descriptive political histories written about the foreign policies of specific countries.3 Drawing from available records and histories, Thompson and David Dreyer have generated a universe of strategic rivalries from 1494 to 2010 that serves as the basis for this project’s empirical analysis.4 This project measures rivalry termination as occurring on the last year that Thompson and Dreyer record the existence of a rivalry.5 Why Might Economic Crisis Cause Rivalry Termination? Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.

#### Off-ramps to war solve

Schultz 18 (Kenneth, Professor of Political Science at Stanford University, “Perils of Polarization for U.S. Foreign Policy.” Washington Quarterly, Winter 2018)

From the perspective of the country’s foreign policy, one danger is that presidents can respond to this political risk by shaping military operations in ways that make them less effective. A president who expects to meet opposition may decide not to use force in a case where doing so might further U.S. interests—e.g., plausibly, Syria in 2013—or to delay getting involved while a crisis deepens—e.g., Bosnia from 1992–95.22 Presidents may also tailor the military strategy to ensure that an operation incurs low costs in terms of American casualties, thereby preventing a political backlash.23 For example, the (unauthorized) operations over Kosovo and Libya were designed to rely on air power only. Although several considerations contributed to those decisions—including the need to reassure worried allies and a skeptical Russia— they also dramatically lowered the risk to American service members. As a result, the domestic political salience and risk of these operations were minimized. The Obama administration even cited the limited nature of the Libya mission to argue that U.S. involvement did not rise to the level of “hostilities” for which Congressional authorization was needed.

#### Reject their alarmism – internal checks are resilient

Frisén 17 – Håkan, Head of Economic Forecasting at SEB, 2-22-17, "Global economy resilient to new political challenges," 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.¶ It is reasonable to assume that this may also underpin the rather cautious reactions to the risks associated with the Trump administration's agenda. Although one cannot complain about the administration's power of initiative, there is a fairly high probability that in important areas it will not go from words to actions. There may be various reasons for this, such as the inertia built into the separation of powers between the White House, Congress and the court system, or expectations that Trump's newly appointed cabinet secretaries and advisors will eventually take their cues from more established US positions.

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

#### Best literature review proves biz con is irrelevant for prosperity – it reflects political conditions and isn’t predictive – even the best theoretical studies are correlative not causal

Salmond 9 ---- Rob, Assistant Professor of Political Science (University of Michigan), Faculty Associate at the Center for Political Studies (University of Michigan), PhD (UCLA), M.A. (Iowa), “Political Business Confidence Cycles: The Political Causes and Effects of Business Confidence Surveys,” [http://robsalmond.com/sites/default/files/Salmond%20working%20paper%20(Business%20Confidence).pdf](http://robsalmond.com/sites/default/files/Salmond%20working%20paper%20(Business%20Confidence).pdf#116)

There are two broad questions about business confidence that are important to the social scientific community: where does business confidence come from; and what does it achieve? Questions about the origins of business confidence have received little scholarly attention. The most prominent recent research in this area is Buthe (2002). Buthe shows that business confidence is higher in both Germany and the US under conditions of right government, and that this effect remains even when controlling for real economic conditions. Buthe explains his first result as a function of business’ collective ideological and distributive concerns, but admits that his theory does not provide a ready explanation for his second result. Additionally, Silverstone and Mitchell (2005) obtained firm-level data from quarterly business confidence surveys in New Zealand. They found that survey respondents tended to respond the same way to the questions about the macroeconomic situation as they respond to microeconomic questions about their own enterprise, and also found that firms’ responses are affected by signals of confidence coming from elsewhere in the economy. That is, confidence can be contagious. They also found, however, that different types of firms associate different things with their overall confidence, and that those associations change over time. These findings lead Silverstone and Mitchell (2005, p. 18) to conclude pessimistically that: “it is not immediately apparent what a rise or fall in business confidence actually means.” The performance of business confidence can be broken in to two constituent parts: its predictive performance; and its causal impact. The most wide-ranging study on the predictive performance of business confidence was conducted by Santero and Westerlund (1996) under the auspices of the OECD. They examined patterns of business confidence, consumer confidence, and economic output across eleven advanced economies, finding that business confidence is a good predictor of output whereas consumer confidence is not. The best correlations between business confidence and output were found when the output measure (in this case year-on-year GDP growth) is lagged by either two or three financial quarters, which they say provides a clue that the business confidence indicator is indeed prescient of future events, rather than simply reflective of current ones. I will return to this point later in the paper. In terms of the causal impact of business confidence on the economy, Santero and Westerlund’s empirical analysis also found that business confidence measures “Granger caused” changes in economic output. Granger causation is a measure of correlation rather than causation – testing whether variable A (in this case business confidence) provides additional information about the future value of variable B (here GDP growth) beyond the information contained in variable B’s own history. While this empirical result is interesting, it does not provide any theory under which business confidence has an independent impact on output. Such an independent impact is of critical importance to business leaders because its existence is ultimately what makes politicians and citizens alike wary of actions that would lower business confidence. A causal impact does, however, exist in economic theory. Ng (1992) showed that, in broadly defined conditions of imperfect competition, self-fulfilling drops in business confidence (which Ng defines as the expected value of aggregate demand) are possible. That is, an exogenously caused drop in business confidence can plausibly cause a recession entirely on its own. Business confidence causal impact on political phenomena such as incumbent approval, partisan public opinion, and election results are substantially unexplored in the academic literature, despite the assumption of such effects found in much business and political journalism.

### 2NC---War Chest

#### First – resources – states use funds to ensure military build up which creates cycles of aggression – and, asymmetric resources cause war

Levy & Thompson 10 (Jack S & William R; Levy is Board of Governors' Professor of Political Science at Rutgers University, former president of the International Studies Association, Affiliate at the Saltzman Institute of War and Peace Studies at Columbia University; Thompson is Distinguished Professor and the Donald A. Rogers Professor of Political Science at Indiana University; 2010; “The Dyadic Interactions of States”; *Causes of War*; pp. 72-75, published by Wiley-Blackwell)

Realist and rationalist critiques Realists, who share the economic nationalism and statist orientation of the old mercantilists, criticize the liberal economic theory of peace on a number of grounds. First of all, they argue (as do some non-realists) that even if it were true that trade has a pacifying effect, the magnitude of the impact of trade on decisions for war and peace is small relative to that of military and diplomatic considerations (Buzan, 1984 ; Levy, 1989b ). Realists, like mercantilists, argue that states are motivated primarily by power and that economic opportunity costs of war are minor in the context of the long-term struggle for power. Were the Western liberal democracies seriously concerned about the short-term loss of trade when they made decisions to go to war against the hegemonic threats posed by Germany in 1914 and again in 1939? Realists also argue that trade and other forms of economic interdependence can actually increase the level of militarized conflict rather than reduce it (Barbieri, 2002 ). As Rousseau (cited in Hoffmann, 1963 :319) argued, “…interdependence breeds not accommodation and harmony, but suspicion and incompatibility. ”Among other things, interdependence creates increased opportunities for conflict. The greater the interdependence between states, the greater the number of things to argue about. In addition, whereas liberals argue that economic interdependence creates mutual dependence and incentives to avoid war, realists argue that interdependence may also be asymmetrical. Each is dependent on the other, but the degree of dependence is uneven. The less dependent party may be tempted to use economic coercion to exploit the adversary’s vulnerabilities and influence its behavior relating to security as well as economic issues. 32 These can lead to retaliatory actions, conflict spirals, and war. 33 The temptation to exploit asymmetries of interdependence is enhanced by the realist view that political leaders are concerned with “relative gains” and that they aim to maximize their power relative to that of their adversaries. 34 Whereas liberals focus on absolute gains and ask how much states gain from trade, realists focus on relative gains and ask who gains more. Liberals are more interested in the size of the pie, while realists are more interested in who has the larger slice. With respect to economic gains, realists assume that a state can convert any disproportionate economic gains into military power (Huntington, 1993a). Realists argue that in relations between adversaries or rivals, political leaders on at least one side will fear that the adversary will gain more from trade and convert those gains into further economic gains, political influence, and military power. This leads realists to argue that leaders’ concerns about relative gains will lead to reductions in trade in intense international rivalries and to the termination of trade if war breaks out between trading partners (Gowa, 1994 ). Concerns about the effects of asymmetric interdependence (and even symmetrical interdependence) are also shared by many rational choice theorists. One analytic problem with the economic opportunity cost model is that its causal logic focuses only on the costs and benefits to individual states and ignores strategic bargaining between states. If states are mutually dependent and fear the economic opportunity costs of escalation and war, it is quite possible that both might make concessions to avoid war, as the opportunity cost model predicts. It is also possible, however, that one side might conclude that its adversary has more to fear from war and more to lose in terms of opportunity costs of war, and that the adversary can be coerced to make concessions to avoid war. This is particularly likely if interdependence is asymmetrical. One state might actually increase its demands during a crisis, and engage in threats of force to back those demands, something that is even more likely to occur if one side is more risk acceptant than the other. In a crisis between interdependent states, then, it is unclear whether states will make concessions to avoid the opportunity costs of war or whether they will attempt to exploit their adversary’s fear of war through increased coercion. Depending on the magnitude of the increased demands, war might be more rather than less likely under conditions of interdependence. In the absence of more information, the outcome is indeterminate (Morrow, 2003 :90). This line of argument leads some rational choice theorists to suggest another mechanism through which economic interdependence contributes to peace. The advantage of high levels of economic interdependence is that it provides states with a greater range of options for sending credible signals of their resolve in a dispute. Trade and financial instruments serve as additional mechanisms (economic sanctions, for example) through which states can emphasize their evaluation of the issues at stake and their determination to hold firm, but with less cost and risk of escalation (Morrow, 1999, 2003 ; Gartzke, Li, and Boehmer, 2001 ). Economic sanctions are costly to the initiator as well as to the target. Only states that are highly resolved will be willing to incur those costs, so cutting back on trade or financial flows helps a state to signal its resolve in a dispute. Other states understand this, and the result is to reduce uncertainty about adversary intentions and consequently to reduce the danger of a war through miscalculation. Economic signaling also avoids (or at least delays) the resort to military threats that might also induce compliance but that are also more likely to induce counter-threats and escalation. Realists also question the standard liberal assumption that trade is always more efficient than military coercion in expanding markets and investment opportunities and in promoting state wealth. Realists argue that for much of human history military force has been a useful instrument to promote state wealth as well as power. Many liberals concede this point, but argue that as the foundations of wealth and power have historically shifted from territory to industrialization and now to knowledge - based forms of production, the economic value of territorial conquest has diminished, at least for advanced industrial states. The greater the mobility of production and of capital, the less is the utility of war as a means for acquiring wealth (Hirschman, [1945]1980 ; Brooks, 2005 ). Strategies of enhancing wealth through conquest have been replaced by strategies of enhancing wealth through trade, finance, and other forms of economic exchange. This line of argument leads Rosecrance (1986) to argue that the military state has gradually given way to the trading state. 35

#### Reverse causal – a “Goldilocks depression” is key – long term crash massively turns case

\*Resource wars AND debt-oil collapse within a decade make their war impacts inev

Alexander 19 (Samuel, Simplicity Institute, and Ted Trainer, Melbourne Sustainable Society Institute, “The simpler way: envisioning a sustainable society in an age of limits,” real-world economics review, issue no. 87, <http://www.paecon.net/PAEReview/issue87/TrainerAlexander87.pdf)//NRG>

5. Conclusion There has been insufficient recognition of the way all the major global problems derive primarily from having exceeded the sustainable limits to growth. For instance the damage being inflicted on ecosystems can only increase unless we move to lifestyles and systems involving far lower per capita consumption than we are familiar with in the rich world. The soon to be 7+ billion people living in poorer countries can only receive a fair share of the planet’s resources if those living in the rich countries reduce their consumption dramatically. Most armed conflict is to do with fierce competition to secure scarce resources and markets, meaning that if we insist on remaining affluent we will need to remain heavily armed. And the social cohesion and quality of life even in the richest countries will continue to deteriorate. These problems cannot be defused unless simper lifestyles and systems are willingly embraced. Several analysts have stressed the fragile house-of-cards nature of the global economy in our age of financial and ecological limits (see, for e.g., Korowicz, 2012; Morgan, 2013; Greer, 2008). Above all is its dependence on debt, now in excess of $250 trillion, three or more times global GDP and far higher than before the GFC. These considerations align with Marx’s fundamental insight regarding the self-destructive contradictions built into the foundations of capitalism, even though he did not clearly envisage its resource limits. In an oil dependent economy, it is highly likely that if the yield from shale oil production falters in the next decade or so a global debt crash of unprecedented proportions will suddenly impact. It might not be the final GFC; some envisage partial recovery initiating a “bumpy road down” or a slow “catabolic collapse” (Greer, 2008). But others foresee the end of civilisation and the die-off of billions. What is to be hoped for is a “Goldilocks depression” that falls short of catastrophic breakdown but is serious enough to jolt large numbers into recognising that the growth and greed system is not going to provide for them.

#### Globalization supercharges our arg

Irandoust 17 (Manuchehr Irandoust, Department of Economics and Finance, School of Business Studies, Kristianstad University, “Militarism and globalization: Is there an empirical link?” Quality and quantity, June 16, 2017, Springer Open Access)

[GLOB = globalization index, MIS = militarized spending]

The results of the bootstrap panel Granger causality test are shown in Table 2. The findings show that GLOB and MIS are causally related in most of the countries under review. There is a bi-directional causality in UK, US, Saudi Arabia, and Russia. The causality is unidirectional running from GLOB to MIS in Australia, Brazil, India, and China, and running from MIS to GLOB in Turkey. The degree of significance level varies from country to country. There is no any causal relationship between military spending and globalization in France, Italy, South Korea, Germany, and Japan. Overall, this evidence shows a relatively robust association between changes in globalization and changes in military expenditure. In other words, countries experiencing greater globalization have relatively large increases in militarization over the past 20 years.¶ However, it has been shown that globalization may not lead to more peaceful relations or demilitarization. As we discussed in Sect. 2, bilateral trade increases the opportunity cost of bilateral war and may hinder bilateral war. Globalization (equivalent to multilateral economic openness) reduces this opportunity cost with any given country and devitalize the incentive to make concessions during negotiations, and, therefore, increases the probability of war between any given pair of country. Thus, an increase in trade or openness between two countries may restore peace between those but may increase the probability of conflict with third countries.¶ 6 Conclusion¶ While previous studies mostly focused on the causal nexus between military expenditure and economic growth, those studies have not considered the role of globalization. This study uses data from the top 15 military expenditure spenders over the period 1990–2012 to examine the relationship between militarism and globalization. The bootstrap panel Granger causality that accounts for both cross-sectional dependence and heterogeneity across countries is utilized to detect the direction of causality. The results show that military expenditures and globalization are causally related in most of the countries under review. Despite the increasing role of globalization, the results show that military expenditures are growing and pointing to a strengthening in nationalist sentiments and militarism. This paper suggests that changes in domestic political and economic conditions might hinder the process of globalization. The results are consistent with those of Acemoglu and Yared (2010) who conclude that high military spending endangers globalization. This study also supports the results of Martin et al. (2008) who find that an increase in multilateral trade raises the chance of conflict between states. The policy implication of the findings is that greater military spending by a country increases the likelihood of military conflict in the future, the anticipation of which discourages globalization.

#### That explains every war

Dr. David Adams, 2002, former UNESCO Director of the Unit for the International Year for the Culture of Peace, former Professor of Psychology (for 23 years) at Wesleyan University, specialist on the brain mechanisms of aggressive behavior and the evolution of war, “Chapter 8: The Root Causes of War,” The American Peace Movements, p. 22-28, <http://www.culture-of-peace.info/apm/chapter8-22.html>

To take a scientific attitude about war and peace, we must carry the causal analysis a step further. If peace movements are caused by wars and war threats, then we must ask, what are the causes of these wars, both in the short term and in the long term? Before analyzing the causes of wars, **it is necessary to dismiss a false analysis** that has been popularized in recent years, the myth **that war is caused by a "war instinct."** The best biological **and anthropological data indicate that there is no such thing as a war instinct** despite the attempt of the mass media and educational systems to perpetuate this myth. **Instead, "the same species that invented war is capable of inventing peace**" (note 15). Since there are several kinds of war, it is likely that there are several different kinds of causes for war. There are two kinds of war in which the United States has not been engaged for over two centuries. The first are wars of national liberation such as the American Revolution or today's revolutions in Nicaragua and South Africa being waged by the Sandinistas and the African National Congress. The second are wars of revolution in which the previous ruling class is thrown out and replaced by another. In the British and French Revolutions of earlier eras the feudal land-owners were overthrown by the newly rising capitalist class. In the revolutions of this century in Russia, China, Cuba, etc. the capitalists, in turn, were overthrown by forces representing the working class and landless farmers. T**he six wars and threats of war that have caused American peace movements** in this century **have been wars of imperial conquest, inter-imperialist rivalry, and capitalist-socialist rivalry.** What are the root causes of these wars in the short term? For the following analysis, I will rely upon some of America's best economic historians (note 16). **The Spanish-American and Philippine Wars** of 1898, according to historian Walter LaFeber, **were inevitable military results of a new foreign policy devoted to obtaining markets overseas for American products. The new foreign policy was the response to a profound depression that began in 1893 with unemployment soaring to almost 20 percent. Farm and industrial output piled up without a market because American workers, being unemployed, had no money to buy them**. Secretary of State Gresham "concluded that foreign markets would provide in large measure the cure for the depression." To obtain such markets, **the** U.S. went into competition **with the other imperialist empires such as Britain and Spain. The U.S. intervened with a naval force to help overthrow the government of Hawaii in 1893, intervened diplomatically in Nicaragua in 1894, threatened war with England over Venezuela in 1895, and eventually went to war with Spain in 1898 and invaded the Philippines in 1898**. To quote from the title of LaFeber's book, the U.S. established a "new empire." **American intervention in World War I again** rescued the economy **from a depression**. In 1914 and 1915, as war between the European imperialist powers broke **out, American unemployment was rising towards ten percent and industrial goods were piling up without a market.** One industrial market was expanding, however, the market for weapons in Europe. The historian Charles Tansill concludes that "**it was the rapid growth of the munitions trade which rescued America from this serious economic situation**." And since the sales went to Britain and France, it committed the U.S. to their side in the war. Finance capital was equally involved: "the large banking interests were deeply interested in the World War because of wide opportunities for large profits." When bank loans to Britain and France of half a billion dollars went through in 1915, "the business depression, that had so worried the Administration in the spring of 1915, suddenly vanished, and 'boom times' prevailed." Of course, German imperialism did not stand idly by while the U.S. profited from arms shipments and loans to their enemies in the war. German submarine warfare against these shipments finally provoked American involvement in the War. The rise of fascism in Europe was the direct result of still another cyclical depression, the Great Depression that gripped the entire capitalist world in the Thirties. In his recent book on the collapse of the Weimar Republic and the rise of fascism, David Abraham has documented **how major capitalists turned to Hitler to fill the vacuum of political leadership when the economy collapsed**. In part, the absence of political leadership "with the collapse of the export economy at the end of 1931...drove German industry to foster or accept a Bonapartist solution to the political crisis and an imperialist solution to the economic crisis. The "Bonapartist solution", as Abraham calls it, was found in Hitler's Nazi Party. As he says, "By mid-1932, **the vast majority of industrialists wanted to see Nazi participation in the government."** For these industrialists, **"an anti-Marxist, imperialist program was the least common denominator on which they could all agree, and the Nazis seemed capable of providing the mass base** for such a program." The appeasement of Hitler's promise to smash the communists and socialists at home and to destroy the Soviet Union abroad expressed a new cause of capitalist war. Up until that time, inter-imperialist wars were simply the response to economic contradictions at home and capitalist competition abroad. In part, World War II was yet another inter-imperialist war. But now a new cause of war was emerging alongside of the old. The rise of socialism was a direct threat to the entire capitalist world. In addition to glutted domestic markets and competition for foreign markets, the capitalists now had to face the additional problem that the overall foreign market itself was shrinking. Thus, they tended to support each other in the face of a common enemy. After World War II, there was a particularly sharp shrinkage in the "free world" for capitalist exploitation as socialism and national liberation triumphed through much of the world. The U.S. and its allies responded by demanding that the socialist countries open their doors to investment by capitalism. According to historian William Appleman Williams, "It was the decision of the United States to employ its new and awesome power in keeping with the traditional Open Door Policy which crystallized the cold war." As Williams explains, "the policy of the open door, like all imperial policies, created and spurred onward a dynamic opposition." **Diplomatic and military confrontation between the U.S. and USSR were used to justify the Cold War and establishment of NATO, but the underlying issues were economic. As** pointed out by historians Joyce and Gabriel Kolko, "**The question of foreign economic policy** **was** not **the** containment of Communism, but rather more directly the **extension and expansion of American capitalism** according to its new economic power and needs." In addition to the new problem of shrinking world markets, there remained the problem of cyclical depressions. Although unemployment was not bad in 1946 because industry was producing to meet the accumulated needs of the war-deprived American people, the specter of another depression was very much a factor in the Cold War. As the Kolkos point out, "The deeply etched memory of the decade-long depression of 1929 hung over all American plans for the postwar era....In extending its power throughout the globe the United States hoped to save itself as well from a return of the misery of prewar experience." **The Vietnam War was a continuation of** the Cold War, as the United States tried to **prevent further shrinkage of the world capitalist economic system**. The U.S. had already fought a **similar war in Korea**. In his chapter, "The U.S. in Vietnam, 1944-66: Origins and Objectives," Gabriel Kolko calls the intervention of the United States in Vietnam, "the most important single embodiment of the power and purposes of American foreign policy since the Second World War." Elsewhere in his book, Kolko goes into detail about **the economic basis of American imperialism: access to raw materials, access to markets for American products, and investment opportunities for American capital.** **The Vietnam War**, he explains, **was not a conspiracy or simply a military decision. It was the natural result of "American power and interest in the modern world."**  Finally **we come to the question of what has caused the massive escalation of the arms buildup** under Presidents Carter and Reagan (and more recently under Bush, father and son). To some extent, it is a response to the old problem of cyclical depressions. Since World War II, **each recession has been deeper than the last, until by 1981 unemployment reached double digits** for the first time since the Thirties. Government spending was needed to put people back to work. Would the government spend the money for military weapons or for civilian needs? A long line of Presidential candidates, standing for the military solution, have been supported in their campaigns by the military-industrial complex against other candidates who were unable to wage a serious campaign for civilian spending instead of military spending. **The growing power of the** military-industrial complex is a new and especially dangerous addition to the economic causes of war. It reflects an economic crisis that goes even deeper than those of the past. In addition to the cyclical depressions and the shrinkage of foreign markets**, there is a new imbalance in the entire structure of capitalism. There is an enormous increase in financial speculation and short-term profit schemes. The military-industrial complex has risen to become the dominant sector of the American economy because through the aid of state subsidies it generates the greatest short-term profits**. Never mind if the U.S. government goes into debt to banks and other financial institutions in order to pay for military spending. The world of financial speculation does not worry about tomorrow. Not only does **this "military spending solution" endanger the** security of the planet, but it also increases the risk of a major financial collapse and subsequent depression. To summarize, we may point to the following causes of American wars over the past century: 1) cyclical crises of overproduction and unemployment, 2) exploitation of poor colonial and neo-colonial countries by rich imperialist countries, 3) economic rivalry for foreign markets and investment areas by imperialist powers, 4) the attempt to stop the shrinkage of the "free world" - i.e. the part of the world that is free for capitalist investment and exploitation, and 5) financial speculation and short-term profit making of the military-industrial complex. In the 1985 edition of this book the argument was made that the socialist countries were escaping from the economic causation of war. In comparison to the capitalist countries, they did not have the same dynamic of over-production and cyclical depression, with periods of enhanced structural unemployment. As for exploitation and imperialism, despite the frequent reference in the American media to "Soviet imperialism," the direction of the flow of wealth was the opposite of what holds true under capitalist imperialism. Instead of the rich nations extracting wealth from the poor ones, which is the case, for example between the U.S. and Latin America, the net flow of wealth proceeded from the Soviet Union towards the other socialist countries in order to bring them towards an eventually even level of development. According to an authoritative source associated with the U.S. military-industrial complex, the net outflow from the Soviet Union amounted to over forty billion dollars a year in the mid-1980's. In one crucial respect, however, the 1985 analysis was incorrect. It failed to take account of the military-industrial complex that had grown to be the most powerful force of the Soviet economy, a mirror image of its equivalent in the West. The importance of this was brought home to those of us who attended a briefing on economic conversion from military to civilian production that was held at the United Nations on November 1, 1990, a critical time for Gorbachev's program of Perestroika in the Soviet Union. The speaker, Ednan Ageev, was the head of the Division of International Security Issues at the Soviet Ministry of Foreign Affairs. He was asked by the Gorbachev administration to find out the extent to which the Soviet economy was being used for military production. Naturally, he went to the Minister of Defense, where he was told that this information was secret. Secret even to Gorbachev. In conversation, Ageev estimated that 85-90% of Soviet scientific researchers were in the military sector. That seems high until you realize that the Soviet's were matching U.S. military research, development and production on the basis of a Gross National Product only half as large. Since about 40% of U.S. research and development was tied to the military at that time, it would make sense that the Soviets would have had to double the U.S. percentage in order to keep pace. How could the Gorbachev administration convert their economy from military to civilian production if they could not even get a list of defense industries? Keeping this in mind, along with the enormous militarization of the Soviet economy, it is not so surprising that the Soviet economy collapsed, and with it the entire political superstructure. The origins of the Soviet military-industrial complex can be traced back to the Russian revolution which instituted what Lenin, at one point, called "war communism". He warned that war communism could not succeed in the long run and that instead of a top-down militarized economy, a socialist economy needed to be structured as a "cooperative of cooperatives." But war communism was entrenched during the Stalin years, carried out of necessity to an extreme during the Second World War, and then perpetuated by the Cold War. The economic causation of the war system is not new. It originated long before capitalism and socialism. From its beginnings in ancient Mesopotamia, the state was always associated with war, both to capture slaves abroad and to keep them under control at home. As states grew more powerful, war became the means to build empires and to acquire and rule colonies. In fact, the economic causation of war probably extends back even further into ancient prehistory. From the best analysis I know, that of Mel and Carol Ember, using the methods of cross-cultural anthropology, it would seem that war functioned as a means to survive periodic but unpredictable food shortages caused by natural disasters. Apparently, tribes that could make war most effectively could survive natural disasters better than others by successfully raiding the food supplies of their neighbors. While particular wars can be analyzed, as we have done above, in terms of immediate, short-term causes, there is a need to understand the war system itself, which is as old as human history. Particular wars are the tip of a much deeper iceberg. Beneath war, there has developed a culture of war that is entwined with it in a complex web of causation. On the one hand, the culture of war is produced and reinforced by each war, and, on the other hand, the culture of war provides the basis on which succeeding wars are prepared and carried out. The culture of war is a set of beliefs, attitudes and behaviors that consists of enemy images, authoritarian social structure, training and arming for violence, exploitation of man and nature, secrecy and male domination. Without an enemy, without a social structure where people will follow orders, without the preparation of soldiers and weapons, without the control of information, both propaganda and secrecy, no war can be carried out. The culture of war has been so prevalent in history that we take it for granted, as if it were human nature. However, anthropologists point to cultures that are nowhere near as immersed in the culture of war, and it is the opinion of the best scientists that a culture of peace is possible. Peace movements have not given enough attention to the internal use of the culture of war. The culture of war has two faces, one facing outward and the other inward. Foreign wars are accompanied by authoritarian rule inside the warring countries. Even when there is no war threat, armies (or national guards) are kept ready not just for use against foreign enemies, but also against those defined as the enemy within: striking workers, movements of the unemployed, prisoners, indigenous peoples, just as in an earlier time they were used against slave rebellions. As documented in my 1995 article in the Journal of Peace Research (Internal Military Interventions in the United States) the U.S. Army and National Guard have been used an average of 18 times a year, involving an average of 12,000 troops for the past 120 years, mostly against actions and revolts by workers and the unemployed. During periods of external war, the internal wars are usually intensified and accompanied by large scale spying, deportations and witch hunts. It would appear that we have once again entered such a period in the U.S. We are hardly alone in this matter. Needless to say, the culture of war was highly developed to stifle dissent in the Soviet Union by Stalin and his successors of "war communism." The internal culture of war needs to be analyzed and resisted everywhere. For example, readers living in France should question the role of the CRS. The internal use of the culture of war is no less economically motivated than external wars. The socialists at the beginning of the 20th Century recognized it as "class war," carried out in order to maintain the domination of the rich and powerful over the poor and exploited. Not by accident, it has often been socialists and communists who are the first to be targeted by the internal culture of war in capitalist countries. And they, in turn, have often made the most powerful critique of the culture of war and have played a leading role in peace movements for that reason. Their historical role for peace was considerably compromised, however, by the "war communism" of the Soviet Union. With its demise, however, there is now an opportunity for socialists and communists to return to their earlier leadership against war, both internal and external, and to insist that a true socialism can only flourish on the basis of a culture of peace. In considering future prospects for the American Peace Movements, I shall begin with trends from the past and then consider different factors for the future? First, let us look back over the economic factors and movements of the previous century to see if the trends are likely to continue. 1**.** Wars are likely to continue **because,** for the most part**, their economic causes remain as strong as ever**: 1) **cyclical crises of overproduction and unemployment**, 2) **exploitation of poor colonial and neo-colonial countries by rich imperialist** countries, 3) **economic rivalry for foreign markets** and investment areas by imperialist powers, 4) **the attempt to stop the shrinkage of the** "free world" - i.e. the **part of the world that is free for capitalist investment and exploitation**, and 5) **financial speculation and short-term profit making of the military-industrial complex**. The fourth factor is not as prominent since the collapse of the Soviet Union, but there is still evidence of this factor at work: for example, the attempted overthrow of the government of Venezuela in spring, 2002, was apparently linked to its developing ties with socialist Cuba, especially in terms of its oil resources. Although the coup d'etat failed, there was a risk of plunging Venezuela into warfare, especially considering the increasingly internationalized war next door in Colombia. **Although the "**war against terrorism**" in Afghanistan, Philippines**, etc. and the associated military buildup is usually justified as revenge for the attacks of September 11, **there seems little doubt that there are economic motives involved as well, including the control of oil resources from** Central Asia **as a supplement to those of the** Middle East. At the same time, **the massive expansion of the military-industrial complex in the U.S. appears at some level to be intended as an increase in government spending to** hedge against declining non-military production, unemployment and financial crises in the stock markets. 2. **The American peace movements have been reactive in the past**, developing in response to specific wars or threats of war, and then disappearing when the war is over or the threat is perceived to have decreased. In fact, this observation at the macro level is mirrored by an observation that I have made previously at a micro level: participants in peace movements have been motivated to an important degree by anger against the injustice of war. This dynamic seems likely to continue. Governments, worried about the reactive potential of peace movements may attempt to engage in very brief wars, just as the U.S. government cut short the 1991 Gulf War after several weeks to avoid an escalating peace movement. In the future, peace movements need to be broadened by linkages to other issues and by international solidarity and unity; otherwise they risk being only temporary influences on the course of history, growing in response to particular wars and then disappearing again afterwards**. The world needs a sustained opposition to the entire culture of war, not just to particular wars.** To be fully successful, the future peace movement needs to be positive as well as negative. It needs to be for a culture of peace at the same time as it is against the culture of war. This requires that activists in the future peace movement develop a shared vision of the future towards which the movement can aspire. I have found evidence, presented in the recent revision of my book Psychology for Peace Activists (note 17), that such a shared, positive vision is now becoming possible, and, as a result, human consciousness can take on a new and powerful dimension in this particular moment of history.

# 1NR---Fullertown R2

## Overview

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### Turns---Case\*

#### Takes out solvency- nondelegation would upend antitrust enforcement- the FTC would be powerless

Hall, 21 – appointed as an Administrative Law Judge to the District of Columbia Office of Administrative Hearings

[Johnathan, "The Gorsuch Test," Administrative & Regulatory Law News, 46.2, Winter 2021, Proquest, accessed 11-11-21]

Given the split on the issue, the importance of understanding Justice Gorsuch's Gundy dissent is paramount. At the very least, the dissent showcases a willingness to reinvigorate the nondelegation doctrine. Quite possibly, it provides the method the Court will use to do so. In my Note, The Gorsuch Test: Gundy v. United States, Limiting the Administrative State, and the Future of Nondelegation, 70 Duke L.J. 175 (2020), I argue that the Gorsuch test is likely stricter than any prior nondelegation test. If the new Supreme Court adopts Justice Gorsuch's formulation of the test for permissible delegations, the Court would severely curtail Congress's ability to give agencies power, thus limiting the administrative state.

The Opinion in Gundy

The statute at issue in Gundy was the Sex Offender Registration and Notification Act ("SORNA"). Under SORNA, sex offenders must register in every state where they live, go to school, or work. The registration system has two main provisions.

Subsection (b) affects only offenders sentenced after the passage of SORNA-the "post-Act offenders." Subsection (d) catches all those not included above. It states:

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

Subsection (d) was intended to cover the roughly half-a-million "pre-Act offenders" who had been convicted prior to SORNA's passage. Pursuant to SORNA, the Attorney General established a rule to apply the registration requirements to the pre-Act offenders. After being convicted for failing to register as a sex offender, Herman Gundy challenged the constitutionality of subsection (d), arguing that it violates the nondelegation doctrine because it leaves the Attorney General with unconstrained discretion to choose whether SORNA will apply to pre-Act Offenders.

Though five justices rejected this argument, only four Justices adhered to the traditional approach to nondelegation cases without reservation. Justice Kagan wrote for the plurality, joined by Justices Stephen Breyer, Ruth Bader Ginsburg, and Sonia Sotomayor. The Court faced two different readings of the statute: one version gave complete discretion to the Attorney General over when-or if-to apply the SORNA requirements to pre-Act offenders, and the other required that the Attorney General apply the SORNA requirements as soon as possible, to the extent feasible. The text, structure, purpose, and legislative history of the law demonstrated that the Attorney General only had the power to adjust the registration requirements for pre-Act offenders as needed for feasibility. In light of the numerous delegations with even broader standards the Court had sustained over the years, the plurality easily determined that SORNA passed constitutional muster.

Justice Alito cast the deciding vote in Gundy, concurring with the judgment without joining the plurality's opinion. He reasoned that the statute did have an intelligible principle based on current doctrine, and "it would be freakish to single out the provision here for special treatment." Gundy, 139 S. Ct. at 2131 (Alito, J., concurring). However, he was amenable to changing the Court's approach to nondelegation, which has been untouched for eighty-four years, provided that a majority of the Court could support a single approach.

Justice Gorsuch dissented, joined by Justice Thomas and Chiefjustice Roberts, proposing a test that he hoped would revitalize the nondelegation doctrine. Gorsuch argued that a Court should only uphold a statute if: (1) the agency's task is to "fill up the details"; (2) the application of the statute turns on executive fact-finding; or (3) the grant of power involves certain nonleg-islative responsibilities. First, filling up the details requires that Congress itself make the policy decision. Second, executive fact-finding involves the gathering of factual information by either the president or one of his subordinates to decide if a statute should apply. Finally, nonlegislative responsibilities include tasks already within the scope of the executive power, such as certain foreign affairs powers entrusted to the president by the Constitution. Applying this three-part test to his reading of subsection (d), Justice Gorsuch found that the statute unconstitutionally delegated legislative power to the Attorney General.

Implications: The "Three Hundred Thousand" Problem

There is a looming question for the nondelegation doctrine: How would the nondelegation reasoning of Justice Gorsuch's dissent affect the countless other statutes with similar phrasing to SORNA were it to replace the governing intelligible principle test? At oral argument, Justice Breyer estimated that the number of rules made under laws as broad as SORNA could be three hundred thousand. Whether this estimate is accurate or not, there can be no dispute that Congress has relied on the intelligible principle understanding of the nondelegation doctrine for almost a hundred years to enact many broad statutes that have shaped American lives in large and small ways.

For instance, the Securities and Exchange Commission can promulgate rules controlling the means of a short sale "as necessary or appropriate in the public interest or for the protection of investors." But the Commission's authority extends even further to overseeing securities and enforcing any violation of its rules with steep criminal penalties. A strict application of the Gorsuch test might render one of the most influential bodies in American government powerless. Correspondingly, it could leave consumers without certain protections and rob the markets of structures deriving from these regulations. The power of the Commission does not amount to merely filling up details. It constantly evaluates policy considerations in the interests of the statute that guide its rulemaking discretion.

There are countless other examples. The Federal Trade Commission operates to prevent "unfair methods of competition." The Secretary of Transportation, acting through the National Highway Transportation and Safety Administration, sets standards as "practicable" to "meet the need for motor vehicle safety." In times of economic depression, Congress has given emergency power to the president to "issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries." Ultimately, using Justice Gorsuch's test, these statutes may be difficult to defend against nondelegation challenges.

Uneasy Application

The confusing nature of the Gorsuch test becomes more apparent when used to decide, counterfactually, a sample nondelegation challenge from a lower court. In United States v. Komatsu, No. 18-cr-651, 2019 WL 2358020, at \*1 (E.D.N.Y.June 4, 2019), Towaki Komatsu shouted at, and then attacked, a Court Security Officer outside of a courthouse building in New York City. After the incident was reported, Komatsu was charged with violating 40 U.S.C. § 1315 and the accompanying federal rule. Section 1315 provides that the Department of Homeland Security "may prescribe regulations necessary for the protection and administration of propertyowned or occupied by the Federal Government." The Department then promulgated a rule banning noisy and disruptive behavior. Komatsu raised numerous constitutional objections, including a nondelegation challenge to § 1315. Magistrate Judge Tiscione decided Komatsu only a couple of weeks before the Gundy opinion was released, disposing of the challenge in one page. Under current doctrine, § 1315 has an intelligible principle-"the protection and administration of property owned or occupied by the Federal Government"-and therefore is constitutionally sound.

Under the Gorsuch framework, the constitutional challenge to § 1315 would have been much stronger. The first prong says that an agency can only "fill up the details," with the policy decision residing with Congress. Here, the attorney for the defendant could easily argue that "protection and administration" of government property gives too much leeway to the Department of Homeland Security to make important policy decisions, thus doing more than "filling up the details." The operative word in the statute is "may," which is permissive, unlike the "shall" in SORNA, which is mandatory. The Department could establish hundreds of rules, tens of rules, or no rules at all. It possesses the complete power to prohibit virtually any activity in federal government buildings. If the secretary chooses, she could allow people to run freely, shout with microphones, hold rallies, or harass potential litigants on the way to the courtroom.

Alternatively, the secretary could impose very stringent requirements up to any other constitutional bar. She could ban any communication devices, limit the number of times a person can enter a building, or decide to impose a fee. The text of the statute is not constraining. Like in Gundy, this power also carries the criminal penalty of imprisonment. And the secretary's choice would affect millions of visitors to public buildings, many times the number of sexual offenders affected by SORNA. Consequently, the secretary is arguably making major policy decisions, not filling up details, and her choices will be the ones visible to the public. If the Gorsuch test prioritizes political accountability, then § 1315 allows legislators to circumvent the task of setting potentially unpleasant rules in the public sphere. This abdication of legislative responsibility would be an unconstitutional delegation of power under Justice Gorsuch's test.

Nor can it be argued that § 1315 involves executive fact-finding or nonlegislative responsibilities. The statute does not ask the agency to make any factual determinations, such as whether a warring power has blocked trading or if a bridge might interfere with commerce. Further, rules regulating conduct in government buildings have never been the traditional domain of the executive. They do not fall under the president's national-security or foreign-affairs-related powers. Therefore, neither the second nor third prongs of the Gorsuch test would save this delegation of power from its alleged constitutional deficiency.

Conclusion

Against the backdrop of two hundred years of congressional reliance and the still-ubiquitous need for Congress to delegate efficiently, the choice to even consider revitalizing the nondelegation principle raises questions. The problem, however, is not just the choice to revisit this topic but also the method Justice Gorsuch has suggested. The Gorsuch test provides minimal doctrinal clarity. Problems would abound if a litigator tried to apply the Gorsuch test to the potentially hundreds of thousands of laws that resemble the standard in SORNA. Moreover, the very structure of power sharing between the legislative and executive branches could be upended. If the Supreme Court decides to revisit nondelegation, it should be cognizant of the various problems that will accompany a change in jurisprudence. Better yet, the Court should retain the intelligible principle test to ensure stability in the law, the government, and the court system.

#### Nondelegation causes rollback

Millhiser 11-3 [Ian Millhiser is a senior correspondent at Vox, 11-3-2021 https://www.vox.com/2021/11/3/22758188/climate-change-epa-clean-power-plan-supreme-court]

Moreover, Gorsuch’s approach would effectively consolidate an enormous amount of power within the judiciary. When the Supreme Court hands down a vague and open-ended legal standard like the one Gorsuch articulated in his Gundy opinion, the Court is shifting power to itself. What does it mean for a statute to be “sufficiently definite and precise” that the public can “ascertain whether Congress’s guidance has been followed”?

The answer is that the courts — and, ultimately, the Supreme Court — will decide for themselves what this vague language means. The courts will gain a broad new power to strike down federal regulations, on the grounds that they exceed Congress’s power to delegate authority.

And Gorsuch would also apply this rule retroactively to statutes drafted long before the Court’s decision in Gundy — an approach with profound implications for the West Virginia case. The section of the Clean Air Act at issue in West Virginia was enacted in 1970.

Perhaps, if the Nixon-era Congress had known it needed to write that law with greater precision, it might have drafted it in a way that Gorsuch would deem acceptable (although it is unclear whether judges like Gorsuch would deem any meaningful environmental protection regime acceptable). But it’s simply unreasonable to expect lawmakers in 1970 to comply with a rule announced by a dissenting justice in 2019.

Gorsuch’s approach to nondelegation, in other words, wouldn’t simply strip Congress of much of its power to delegate authority to agencies. It would allow the most conservative panel of justices to sit on the Supreme Court since the early days of the Franklin Roosevelt administration to run roughshod through decades of federal statutes, invalidating or severely weakening hundreds of provisions drafted at a time when the nondelegation doctrine was widely viewed as a crankish notion that was correctly abandoned in the 1930s.

West Virginia contains the seeds of a constitutional revolution. It could, as Roosevelt warned in 1937, enable the Supreme Court to “make our democracy impotent.”

#### Even with fiat, non-delegation revival destroys agency capacity to enforce effectively

Millhiser 11-3 [Ian Millhiser is a senior correspondent at Vox, 11-3-2021 https://www.vox.com/2021/11/3/22758188/climate-change-epa-clean-power-plan-supreme-court]

This appeals court opinion is now being reviewed by the justices in West Virginia, and the various parties that brought this case urge the Court to state definitively that the Clean Power Plan is not allowed. Such a decision is likely to fundamentally alter the EPA’s powers in ways that could make it very difficult for the Biden administration — or any future administration — to abandon Trump’s policies.

How federal agencies shape policy

The Clean Air Act relied on a type of governance that is ubiquitous in federal law. Congress lays out a broad policy — in this case, that power plants must use the “best system of emission reduction” — and then delegates to the EPA the task of implementing that policy through a series of binding regulations.

Countless federal statutes rely on a similar structure. The Affordable Care Act, for example, requires health insurers to provide certain preventive treatments — such as birth control, many vaccinations, and cancer screenings — at no additional cost to patients, and it delegates the task of determining which treatments belong on this list to experts at the Department of Health and Human Services. The Department of Labor may raise the salary threshold governing which workers are eligible for overtime pay, in part to keep up with inflation.

There are several reasons why this sort of governance, where a democratically elected legislature sets a broad policy and then delegates implementation to a federal agency, is desirable. For one thing, Congress is a dysfunctional mess. If a new act of Congress were required every time environmental regulators wanted power plants to install new technology, it’s likely that those plants would still be using devices that were on the cutting edge in 1993.

Delegating power to agencies also ensures that decisions are made by people who know what they are doing. Imagine, for example, if Congress had to pass a law every time the Food and Drug Administration wants to make a new drug available to the public. Even if Congress had time to vote on such a decision, most members of Congress know very little about biology, chemistry, or medicine.

Delegation also insulates important decisions from political horse-trading. The decision about whether to approve a new drug should be made by scientists in the FDA, not by lawmakers who might be concerned that the drug’s manufacturer is in Arizona, and that they need to butter up Sen. Kyrsten Sinema (D-AZ) to secure her vote for the Build Back Better Act.

#### FTC enforcment relies on the non-delegation doctrine staying dormant

Scalia 21 [Eugene Scalia, Gibson Dunn attorney, 7-9-2021 https://www.gibsondunn.com/wp-content/uploads/2021/07/president-signs-executive-order-directing-agencies-to-address-wide-range-of-businesses-competitive-practices-including-non-compete-agreements.pdf]

Expansive rulemaking could also expose the FTC to legal challenges under the constitutional “nondelegation doctrine,” which limits the extent to which Congress may delegate lawmaking power to administrative agencies. Although the nondelegation doctrine has seldom been invoked by the Supreme Court since the New Deal Era, in 2019 five Supreme Court justices expressed interest in reviving the doctrine.[7]

[Footnote 7] [7] Gundy v. United States, 139 S. Ct. 2116 (2019) (Gorsuch J., dissenting) (joined by Chief Justice Roberts and Justice Thomas); Id. at 2131 (Alito, J., concurring); Paul v. United States, 140 S. Ct. 342 (2019) (Kavanaugh, J., concurring in denial of certiorari).

Those five justices constitute a majority of the current Supreme Court. The FTC Act, which delegates to the FTC the authority to regulate “unfair” behavior, may be susceptible to a challenge on the grounds that Congress must provide concrete guidance to cabin the FTC’s exercise of its delegated power.

### Non-Delegation Impact---2NC\*

#### Biden delegation key to every impact – especially key to end COVID, solve climate change, manage nuclear waste, and regulate Juul

Mullen and Singh 20 ---- Hannah Mullen is a Graduate Fellow at the Appellate Courts Immersion Clinic (Georgetown Law) and a former clerk on the D.C. Circuit for the Honorable Merrick Garland with a JD (Harvard Law School), Sejal Singh is a Justice Catalyst Fellow at Public Citizen Litigation Group, former labor policy expert at the Congressional Progressive Caucus Center, and former Teaching Fellow in Constitutional law (Harvard Law School) with a JD (Harvard Law School), “The Supreme Court Wants to Revive a Doctrine That Would Paralyze Biden’s Administration,” *Slate*, 12/1, <https://slate.com/news-and-politics/2020/12/supreme-court-gundy-doctrine-administrative-state.html>

Joe Biden promised us an FDR-sized presidency—starting with bold action to halt the spread of COVID-19, end the worst economic downturn in decades, and stop the climate crisis. Biden could use regulation and executive action to move quickly to decarbonize the economy, cancel student loan debt, and raise wages. But a Biden administration has an even bigger problem than two long-shot special elections in Georgia: the new 6–3 conservative majority on the Supreme Court may soon burn down the federal government’s regulatory powers.

At least five conservative justices have signaled that they are eager to revive the “non-delegation doctrine,” the constitutional principle that Congress can’t give (“delegate”) too much lawmaking power to the executive branch. On paper, the rule requires Congress, when delegating power to an agency, to articulate an “intelligible principle” (like air pollution regulation needed “to protect public health”) to guide the agency’s exercise of that power. But in practice, the nondelegation doctrine is effectively dead. The court has only struck down two statutes on nondelegation grounds—and none since 1935.

Today, most of the government’s work is done through the “administrative state,” the administrative agencies and offices, like the Environmental Protection Agency, the Department of Labor, and the Department of Education, which issue regulations and enforce laws. Congress doesn’t have the capacity to pass laws that nimbly address complex, technical, and ever-changing problems like air pollution, COVID-19 exposure in workplaces, drug testing, and the disposal of nuclear waste. So Congress tasks agencies staffed with scientists and other specialists to craft regulations that directly address those problems. This division of responsibility—Congress legislates policy goals and agencies implement them effectively—is the foundation of functional government.

Take, for example, the Clean Air Act. In 1963, Congress ordered the EPA to regulate air quality standards “at a level that is requisite to protect public health.” Based on that authority, the EPA routinely issues lifesaving regulations limiting lead in the air, air pollutants coming from chemical plants, and, critically, greenhouse gasses. Biden can use the CAA to start tackling the climate crisis on Day One. The dormant nondelegation doctrine is the foundation of thousands of regulations across dozens of agencies, allowing agencies to make technical decisions about, say, hospital reimbursement rates to administer Medicare or wage and hour rules that protect workers from exploitation.

But last year, in a case called Gundy v. United States, four conservative justices announced that they wanted to bring the nondelegation doctrine back to life. Gundy arose out of a national sex offender registry law that explicitly applied to everyone convicted after the law took effect but delegated authority to the Department of Justice to determine when and how it applied to people convicted before the law took effect. Herman Gundy, who was convicted before the registry law took effect, argued that the law violated the nondelegation doctrine. The court upheld the law. But in a dissent joined by Chief Justice John Roberts and Justice Clarence Thomas, Justice Neil Gorsuch wrote that the court should revive the dormant nondelegation doctrine.\* Gorsuch’s dissent argued that Congress may only delegate policymaking power to agencies under three narrow circumstances: to “fill up the details” of a legislative scheme; for executive fact-finding to determine the application of a rule; and to assign nonlegislative responsibilities to the executive and judicial branches. Justice Samuel Alito wrote separately to say he’d like to “reconsider” the nondelegation doctrine—just not in a case about sex offenders’ rights.

Justice Brett Kavanaugh wasn’t on the court in time to hear Gundy. But last fall, in a separate opinion, he signaled his support for Gorsuch’s new, revived nondelegation doctrine. That makes five votes for resurrecting the nondelegation doctrine and taking a hatchet to landmark labor, environmental, and consumer protection law—even without Justice Amy Coney Barrett, who, administrative law experts warn, shares the conservative justices’ hostility to the administrative state.

As Justice Elena Kagan pointed out in Gundy if the conservative justices bring back the nondelegation doctrine, “most of Government is unconstitutional.” Exactly how much government would be unconstitutional, though, isn’t clear. What does Gorsuch mean when he writes that Congress may give agencies the power to “fill up the details” of a legislative scheme? What does Kavanaugh’s test—that Congress may not delegate “major policy questions” to agencies—actually forbid in practice? Would Biden’s EPA be permitted to issue regulations about greenhouse gasses or new, dangerous chemicals leaking into our public waters? Congress relies on OSHA experts to set workplace safety standards that are “reasonably necessary or appropriate to provide safe or healthful employment.” Does that “delegate” too much power to OSHA to act fast to issue COVID-19 safety standards for transportation, grocery stores, and meatpacking workers, as Joe Biden has promised to do? What about the EEOC’s power to interpret anti-discrimination to address workplace dress codes that discriminate against Black women’s natural hair? What about the FDA’s authority under the Family Smoking Prevention and Tobacco Control Act to subject “any” tobacco products to federal regulations—is “tobacco products” narrow enough under Gorsuch and Kavanaugh’s tests? Or would an FDA decision to regulate Juul just like cigarettes be a “major policy question” outside agencies’ powers?

The uncertainty alone could give special interests like fossil fuel companies and Juul grounds to sue to stop, or at least hold up, lifesaving regulations issued by the Biden administration. They’re already trying—just last year, e-cigarette company “Big Time Vapes” argued that the FDA’s power to regulate “any” tobacco product violated the nondelegation doctrine. The U.S. Court of Appeals for the 5th Circuit rejected that challenge. But in its opinion, the 5th Circuit hinted that similar challenges could soon be successful, as the Supreme Court “might well decide—perhaps soon—to reexamine or revive the nondelegation doctrine.” And if that happens, all bets are off.

Such a decision would not only threaten existing regulations. It endangers every piece of future progressive legislation, too. Big, transformative legislative packages, like a Green New Deal or “Medicare for All,” would require a million and one technical decisions that Congress is poorly positioned to make. Biden and Congress can pass legislation phasing the United States toward 100 percent clean energy by 2030—but someone will have to actually sweat the details about which engines can be included in which cars.

Government doesn’t work without the administrative state. But that’s sort of the point. The conservative justices have long been hostile to regulation and executive action. And now they may finally have the votes to bring virtually any regulation to a halt. At least five justices are ready to drop a 1,000-pound anvil on any Biden administration rule that displeases them.

#### Effective regulations solve extinction

Matus 14 [Kira Matus, PhD, Havard University. Associate Head and Associate Professor, Division of Public Policy, Hong Kong University of Science and Technology. "Existential risk: challenges for risk regulation." Risk and Regulation (Winter 2014). https://futureoflife.org/data/documents/Existential%20Risk%20Resources%20(2015-08-24).pdf?x93895]

There is a trend in many areas towards attention to ‘big’ risks. Financial regulation has become increasingly concerned with so‐called systemic risks. Others, and not just Hollywood blockbusters, have been attracted to the study of civilization‐destroying catastrophic risks. Indeed, the OECD has become increasingly interested in ‘high level’ risks and ways in which different national governments seek to prepare for and manage actual events, such as the aftermath of major earthquakes, or the response to a terrorist attack. The notion of ‘existential’ risk might be adding to the cacophony of emerging ‘big’ risk concerns. However, existential risk deserves special attention as it fundamentally adds to our understanding of particular types of risks, and it also challenges common wisdom regarding actions designed to support continued survival.

What is existential risk? We can approach this question by looking at several attributes. The first attribute is what, in fact, is at risk. One set of existential risks are those that threaten survival. These are the acute catastrophes, i.e. the idea that particular events’ impacts are likely to extinguish civilization. Such risks have been identified when it comes to asteroids, nuclear war, and other largescale events that undermine the possibility for survival in general, or, at least, in large regions. A second set is based on the idea that existential risks are not just about physical survival, but about the survival of ways of life. In other words, certain risks are seen as threatening established ways of doing things, cultures, social relationships, and understandings of the ‘good life’. There is, of course, much disagreement about what the good life constitutes, and therefore there will always be disagreement as to what exactly an existential risk constitutes.

A second attribute is the degree to which an existential risk is triggered by a single catastrophic incident. Existential risks arise not merely from one‐off large incidents, such as earthquakes, tsunamis, nuclear meltdowns or, indeed, asteroid hits. Rather, existential risks are about complex, inter‐related processes that result in cascading effects that move across social systems. The overall impact of these system changes could result in the types of physical or cultural destruction that is the focus of the first two perspectives.

Whether triggered by catastrophic events or complex cascades, standard operating procedures are unlikely to be sufficient for dealing with existential risks; instead, this is a space in which improvisation and creativity are required. A third attribute of existential risks is the challenge they present to standard approaches to risk regulation. Existential risks are defined by their cross‐systematic nature; a failure within one system (say, finance) has not just catastrophic implications for the sector in question, but threatens the survival of another system (say, the environment, as funding for particular measures dries up). In other words, the focus of existential risks is not just on the systemic level, it focuses on the cross‐ systemic dimension that is even more difficult to predict and assess than attempts aimed at establishing activities that are of ‘systemic’ relevance by regulatory systems that tend to be narrowly focused and independent from each other. Existential risks are characterized by a fourth feature, namely the idea that existential risks lead to responses based upon fear. Individuals are confronted with fears about their survival (death) and about the meaning of their lives. This aspect of existential risk is particularly troublesome in an age of low trust in authority and, consequently, a political style that is intolerant of ‘blame free’ spaces. In the absence of confidence in public authority, few options remain. For some, the solution will rely on framework plans, pop intellectuals and other fashionable ideas that seem to offer redemption from the fear of extinction. Others will prefer to ‘go it alone’ and seek to develop their own plans for survival, noting that risk taking is, after all, an individual choice. Others, again, will deny the legitimacy of public authority and veer towards those choices that have been legitimized by their own communities. Finally, some will deny that existential risks exist in the first place. In other words, individual responses to existential risks vary considerably and pose challenges for any risk management and communication strategy.

#### Specifically, unregulated nuclear waste is a bioaccumulate---it’s an existential risk

Morris 16 [Margaret Morris. Inventor of the GEO-DMF System for robotically building virtually permanent automated solid rock outer space facilities, worked for decades as an assistant to Dr. Joseph Davidovits, the award-winning founder of the chemistry of geopolymerization, worked with the late Dr. Edward J. Zeller, Head of the former NASA-funded Radiation Physics Laboratory, at the Space Technology Center of the University of Kansas. 04-05-16. “Nuclear Waste Pollution is an Existential Risk that Threatens Global Health.” Institute for Ethics and Emerging Technologies. https://ieet.org/index.php/IEET2/more/morris20160405]

Deadly environmental pollution has become an existential risk that threatens the prospect for the long-term survival of our species and a great many others. Here we will focus on the nuclear waste aspect of the problem and ways to mitigate it before there is a critical tipping point in our global ecosystem. As philosopher Nick Bostrom said in his 2001 paper titled “Existential Risks,” published in the Journal of Evolution and Technology, “Our future, and whether we will have a future at all, may well be determined by how we deal with these challenges.”1 Unlike many radioactive materials that degrade fairly rapidly, some will remain intensely poisonous for incredibly long periods. Plutonium-240 (Pu-240) has a half-life of 6,560 years. The half-life is the time it takes for radioactive decay to decrease by half. But decay does not occur at an even pace, and radioactive isotopes are dangerous for much longer – typically 10 to 20 times the length of their half-life. Pu-238 has an 88-year half-life, and is used for space vehicles despite the frequency of rocket failures. Any exploding rocket including such cargo spreads pollution far and wide. Pu-239 has a half-life of over 24,000 years, and will remain radioactive for about a half a million years. But the situation is more complicated because as Pu-239 decays it transforms to uranium-235 (U- 235), which has a half life of 600 to 700 million years. Iodine-129 has a half-life of 16 million years. Pu-244 has a half-life of 80.8 million years. U-238 has a half- life of 4.5 billion years.2 Plutonium When taken into the body, isotopes of radioactive plutonium are not fully eliminated and tend to accumulate. They are deadly when sufficiently accumulated. Pu-239 was described by its co-discoverer, chemist Glenn Seaborg, as “fiendishly toxic.” In addition to terrible chemical toxicity, plutonium emits ionizing radiation. Pu-239 emits alpha, beta and gamma particles. Gamma radiation can penetrate the entire body and kill cells. Pu-239 has a robust resonance energy of 0.2 96 electron-volts that can badly damage DNA and produce birth defects that carry over generations.3 The body repairs tissues and DNA, but becomes overwhelmed when plutonium concentrates too heavily. According to a 1975 article in New Scientist Magazine, “But if it is inhaled, 10 micrograms of plutonium-239 is likely to cause fatal lung cancer.”4 Experts estimate that Pu-239 is so noxious that only one pound would be enough to kill everyone on our planet if it were so evenly dispersed in the air that everyone inhaled it.5 Although it occurs in nature in exploding stars, almost all plutonium on Earth is man-made – the product of manufacturing nuclear weapons and energy in nuclear power plants. Of the different forms of nuclear products, deadly Pu-239 is very abundant because it is used to make nuclear weapons and is a by-product of energy production in nuclear reactors. As part of the U.S. weapons program (between 1944 and 1988), 114 tons of Pu-239 was produced in nuclear reactors at the Hanford Works facility, in Washington state, and at the Savannah River Site in South Carolina.6 Large quantities of this Pu-239 remains at temporary storage facilities at these locations. Hanford stores about 50 million gallons of high-level radioactive nuclear and chemically hazardous wastes in underground storage tanks that were not designed for long-term storage. Roughly a third of these tanks have leaked, so that at least a million gallons of radioactive waste has reached the natural environment. Hanford is the most toxic site in the U.S., and among the most toxic places on Earth. Over 1,000 contaminated sites at Hanford have been identified. Groundwater aquifers are polluted for over 200 square miles beyond Hanford. No less than nine pounds of Pu-239 is used to make a working nuclear bomb. As of 2015, a total of 15,695 nuclear weapons are stockpiled by nine countries.7 Some of these weapons are 35 years old, but have a shelf-life of only 25 years.8 These aging weapons are undergoing corrosion. oxidation and other detrimental changes, and they must constantly be maintained and upgraded to prevent them from becoming an immanent threat to life on Earth. They are primary war targets. The situation emphasizes the need for absolute global peace. As of 2014, about 435 nuclear power plants have been built in 31 countries around the world.9 A great number of radioactive products, including Pu-239, are byproducts of U-235 fission occurring in the fuel rods of those plants with uranium reactors. In addition to being susceptible to natural disasters and accidents, these nuclear plants are all vulnerable to acts of war. They, too, emphasize the need for absolute global peace. Many nuclear power plants are operating beyond their established service lives, and storing their nuclear wastes remains highly problematic. No method for the long-term storage of high-level nuclear products was available when industries began producing them to make commercial energy and weapons. Storage remains very precarious, and there is no realistic way to safeguard those that are long-lived. There are 93 different long-lived radioactive elements that are toxic for a minimum of 17,000 years, and the time scale extends for many billions of years of total decay time for some.10 The U.S. alone stores tens of thousands of tons of spent fuel containing Pu-239 and other highly radioactive materials from the various reactor cores. The quantity continues to increase worldwide as long as the nuclear plants continue to operate. About 1% of spent nuclear fuel is plutonium, and nuclear power provides about 10 percent of the world’s electricity. A uranium reactor will contain about a ton of plutonium. These figures provide a rough idea of the enormity of continual global radioactive waste accumulation. Aside from accidents like the Chernobyl disaster (which contaminated 40% of Europe), dangers include the potential for spontaneous fuel combustion and nuclear meltdown at pools containing spent fuel. The following quote from a National Research Council Panel report provides a rough idea of the growing tonnage build-up of plutonium from commercial nuclear reactors: “New production of commercial reactor plutonium during the first half of the 1990s was about 70 MT [metric tons] per year.”11 At least four to five tons of Pu-239 are known to have been released into the environment during nuclear weapons testing.12 Much of the Pu-239 remains buried underground at the test sites. But some was released into the air during atmospheric tests, and some traveled for many miles by way of groundwater after underground tests. About two-thirds of the plutonium in the atmosphere winds up in the oceans, where it tends to sink to their bottoms and challenges sea life. The polluted sediment is disturbed and redistributed by underwater tsunamis, earthquakes, volcanoes and enormous landslides. According to the U.S. Environmental Protection Agency (EPA): “Residual plutonium from atmospheric nuclear weapons testing is dispersed widely in the environment. As a result, virtually everyone comes into contact with extremely small amounts of plutonium.”13 The EPA adds: “People may inhale plutonium as a contaminant in dust. It can also be ingested with food or water. Most people have extremely low ingestion and inhalation of plutonium.” Given that humans retain plutonium, the longer we live the more of it our bodies can accumulate. Although exposure can vary widely because of the way plutonium becomes distributed in the environment, it is has already reached high enough levels globally to cause serious concern: According to a report from the Proceedings of the NATO Advanced Research Workshop of the year 2000, titled High-Sensitive Determinations of Pu and Am Content in Human Tissues: “Now plutonium of both industrial and weapon origin is widely spread all over the world and included in the soil cycle, water cycle and the food chain, the end point of which is a human body….Now we warn about the serious hazard of dangerous accumulation of plutonium and americium in human body, especially in liver and bones….As it has been established recently, plutonium in its tetravalent state (TV+) is accumulated in human body during the whole life…”14

## UQ

### UQ – 2NC

**Court will punt now but its close – case provides the chance to challenge EPA authority on the CAA**

**Hale 12/10** Zack Hale Federal energy policy reporter for @SPGMI\_Energy “Supreme Court's review of EPA authority carries far-reaching implication.” 10 Dec, 2021. https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/supreme-court-s-review-of-epa-authority-carries-far-reaching-implication-67698325 {DK}

President Joe Biden's EPA has since begun to develop a replacement for both the ACE rule and Clean Power Plan. And while the Supreme Court's decision to review the D.C. Circuit ruling has sparked concern throughout the environmental law community, EPA Administrator Michael Regan has pledged that the agency will "continue to move forward" through its statutory authority under the Clean Air Act. The powers at stake Multiple sitting Supreme Court justices have warned about executive overreach and the danger posed by the growing power of the administrative state. In the current case, West Virginia v. EPA (No. 20-1530), the judges may examine how much power federal agencies have under the so-called nondelegation doctrine. In the U.S. Constitution, nondelegation says that Congress cannot transfer its lawmaking powers to another authority. But in practice, Congress often writes laws that ask federal agencies to fill in the specifics of how to regulate a given issue, in part because the agencies typically have the expertise needed to work out the relevant technical details. And courts have allowed that practice. Falling in line with a 1984 Supreme Court decision — Chevron v. Natural Resources Defense Council — the court system has granted what is known as Chevron deference to agencies' "reasonable" interpretations of vague laws. Westmoreland Mining Holdings LLC, in the current case, asked the court to address whether the Clean Air Act gives the EPA authority to "decide matters of vast economic and political significance as to whether and how to restructure the nation's energy system." Kavanaugh — during his 12-year stint as a judge on the D.C. Circuit — insisted that an agency may not issue a rule that has great political and economic significance **unless Congress clearly authorizes** it to do so. Kavanaugh argued that a major rule is unlawful unless the statute explicitly authorizes it. If the court decides to reinforce the nondelegation doctrine, federal agencies' abilities to write crucial rules that have historically produced important benefits may be hamstrung, said Nathan Richardson, a university fellow at Resources for the Future. Possible ramifications The first written briefs in the case are due Dec. 13, and Richardson suggested that they may offer some clues on whether the court will choose to address some of the broader issues. "I'm not sure how much the briefing is going to tell us, but if there is one signal it's how much time is spent on in the weeds Clean Air Act stuff versus how much is spent on administrative and constitutional law issues," Richardson said. The court may also be forced to reckon with previous rulings affirming the EPA's authority to regulate carbon dioxide following its 2007 Massachusetts v. EPA decision, which held that the EPA can regulate carbon dioxide and other greenhouse gas emissions **under the Clean Air Act.** A 2014 opinion written by the late conservative Justice Antonin Scalia, for example, slapped the EPA for overreach under the Clean Air Act but still affirmed the agency's authority to regulate power plants through the statute. "Justice Scalia recognized that every time the court looks at an old statute, it's got to ask policy questions like, 'Is this too much of a delegation to an agency?'" Richardson said. "But a lot of people on the current court don't buy that, so they're wading into some deep waters if they do this, politically, and really putting their credibility on the line." The Supreme Court might still punt Since the Clean Power Plan never went into effect and the EPA has abandoned the ACE rule, a majority of justices on the court could still decide that the case West Virginia v. EPA is not yet ripe for review, Gerrard said. "Since there's not really a regulation on the table right now to review, they should just wait until there is one," Gerrard opined. A more likely outcome would be for the high court to only address the question of the EPA's climate **authority over existing power plants**, Gerrard said. Still, the court's decision to grant review in the midst of an ongoing EPA rulemaking shows that the **court has taken a sharp interest** in the scope of the agency's Clean Air Act authority, Megan Houdeshel of the law firm Dorsey & Whitney, said in an email. Oral arguments in the case, brought by the coal-producing states of West Virginia and North Dakota, as well as two coal producers, The North American Coal Corp. and Westmoreland, are expected sometime in late February or early March of 2022.

**Link – 2NC – A2: Not Perceived**

**Antitrust is perceived---it’s in the spot, spot, spotlight**

**Waller 19** (SPENCER WEBER WALLER, John Paul Stevens Chair in Competition Law and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law, ANTITRUST AND DEMOCRACY, 46 Fla. St. U.L. Rev. 807, y2k)

Another important aspect of an **engaged civil society** is the presence of a **robust** academic sector that teaches and studies **competition law**, economics, and policy. In the United States, the directory of the Association of American Law Schools lists approximately 200 accredited law schools with more than 260 professors who teach, or have taught in the past, antitrust law as full-time faculty members. 298This is in addition to numerous part-time adjunct members who teach antitrust courses in addition to their full-time jobs as practicing attorneys, judges, economists, or enforcers. U.S. law schools also offer masters level programs in antitrust and trade regulation both on [\*852] campus, and on line, for students who are currently working in field, hope to work in the field, and who plan to seek academic careers in this area. 299These subjects also are taught in varying degrees in business schools, economics departments, and public policy schools at both the graduate and undergraduate levels. There are numerous antitrust conferences held throughout the year exploring practice, policy, and theory issues. The result is a **robust debate** about the values, techniques, and results of competition law and policy that continues no matter which party is in office or who runs the enforcement agencies.

The government agencies also play a role in creating an engaged civil society in addition to operating in a transparent manner as discussed above. The agencies post a tremendous amount of material on their respective **web sites**, frequently speak to **legal** and **business groups**, publish guidelines for both professional and lay audiences, hold **press conferences** on high visibility cases, and other enforcement actions. The agencies also testify in front of Congress, hold workshops, post on social media, respond to freedom of information act requests, and maintain libraries and databases for the public. 300

Equally important, the agencies receive input from the public as well as send information out to the public. The Agencies receive complaints and white papers from interested parties and the public. 301They obtain testimony and comments from the public in workshops, review responses to draft guidelines, and communicate on an informal basis with members of the competition community on a daily basis. 302

The ways an agency receives input from the public are limited only by its imagination. The Competition and Consumer Commission of Singapore used to hold a contest for the best animated short submission on the evils of cartels. 303Other agencies have come up equally creative ways to receive feedback and input from the public, in addition to the material they make available to the public. 304

[\*853] The **general** and **business press** plays an equally important role in reporting on competition matters. Major publications such as the Wall Street Journal, New York Times, Washington Post, The Economist, and many business magazines **regularly** feature stories about criminal **cartel cases** and **investigations**, issues involving allegedly **dominant firms,** the flood of **mergers** and **acquisitions** in the United States and abroad, and major private damage cases. 305More analytical stories appear on such topics as the role of big data in antitrust, algorithmic competition, and the pros and cons of the EU's enforcement actions against Google and pending investigations of other high-tech firms. 306

**Social media** increasingly is both supplementing and partially substituting for traditional press coverage of competition law and policy matters. There is a **plethora of forums** for competition law topics and well as numerous individuals who post on **Twitter** and/or link to news stories published elsewhere as well as on other social media platforms. 307There is even a substantial number of twitter posts about the merits of so-called "#hipster" antitrust. 308

The result is a **vigorous debate** about most issues of importance in the competition law world and **very few issues of any kind** that **escape notice** and comment in the antitrust profession. The more important and salient of these issues also receive at least some **general public attention** and comment suggesting that **antitrust policy operates in the spotlight**, at least among lawyers and business people most directly affected by the decisions and policies at issue. While competition policy is an area of specialization, and competes with many other issues of more life and death importance for the time and attention of the public, it is heartening to see the number and resources of the actors in civil society who devote time and resources to the promotion of what they consider sound competition law and policy. 309

**Microsoft proves – Antitrust cases are politicized**

### Link---2NC\*

#### That’s true in the antitrust context – there is a perceived ideology of enforcement that it’s liberal – justices make decisions factoring in those external variables

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

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

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

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

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

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

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

### Thumpers – 2NC – A2: Enforcement

### Thumpers – 2NC

## IL

**IL – 2NC – Yes PC**

**Interpretations require use of limited pc**

**Graber 17** MARK A. GRABER Regents Professor, University of Maryland Carey School of Law. (April, 2017). “JUDUCIAL SUPREMACY V. DEPARTMENTALISM SYMPOSIUM: JUDICIAL SUPREMACY REVISITED: INDEPENDENT CONSTITUTIONAL AUTHORITY IN AMERICAN CONSTITUTIONAL LAW AND PRACTICE.” William & Mary Law Review, 58, 1549. <https://advance-lexis-com.proxy2.cl.msu.edu/api/document?collection=analytical-materials&id=urn:contentItem:5P5N-7SJ0-00CW-G21Y-00000-00&context=1516831>. {DK}

Supreme Court Justices would face insuperable legal, institutional, and political barriers should they actually attempt to secure a "monopoly on constitutional interpretation." 26Link to the text of the note The constitutional text interpreted in light of long-standing precedents often mandates judicial decisions allocating constitutional authority elsewhere. The Justices have no legal power to punish jurors who disregard judicial statements of the law. Printz v. United States forbids the Supreme Court from correcting state governors who refuse to allow state police to implement federal laws they believe are unconstitutional. 27Link to the text of the note The Supreme Court is incapable of learning about the vast majority of constitutional decisions that are made every day in the United States. Police officers patrolling the streets make numerous constitutional decisions about when searches are appropriate that are rarely reviewed by their superiors, much less appellate judges. 28Link to the text of the note [\*1556] State and lower federal courts have various means for keeping constitutional decisions beneath the Supreme Court's radar. Furthermore, the **Justices have limited political capital**. 29Link to the text of the note The Supreme Court during the Civil War found various jurisdictional exercises for avoiding decisions on the constitutional status of legal tender and presidential suspensions of habeas corpus. 30Link to the text of the note The Justices of the Ellsworth and Marshall Courts made a strategic decision when ruling that the Supreme Court could exercise appellate jurisdiction only when doing so was consistent with both Article III and a federal statute. 31Link to the text of the note

**IL – 2NC – A2: No Vote Switching\***

**Roberts is compromising by swaying Barrett and Kavanaugh to narrow their rulings and decline to overrule precedent---that creates a centrist bloc.**

**Economist ’21** [The Economist; June 26; International newspaper; The Economist, “America’s Supreme Court is less one-sided than liberals feared,” <https://www.economist.com/united-states/2021/06/24/americas-supreme-court-is-less-one-sided-than-liberals-feared>]

In the autumn, America’s Supreme Court seemed **destined** for a **momentous shift** when Republicans rushed to confirm **A**my **C**oney **B**arrett, a conservative judge, to succeed Ruth Bader Ginsburg, a liberal jurist who had died in September. In place of a **wavering** 5-4 **conservative tilt** that had held for decades, by the end of October the high court had a **6-3 majority** of Republican appointees—the most unbalanced array in a century. Yet as the **final rulings** of Justice Barrett’s first term arrive (including, on June 23rd, a win for students’ speech rights and a loss for union organisers), the **dynamics** of the newly constituted Supreme Court seem more **complex**, and **less extreme** in their results, than many expected.

Justices have life tenure and evolve on the job; a few dozen cases constitute a limited introduction to the kind of judge Justice Barrett will turn out to be or how her presence will reshape the court. But in her first eight months in robes, it seems her votes have **changed the result** from the one if Ginsburg had ruled **only three times**: on June 21st, in a case involving the status of administrative patent judges, and in November and April, when Justice Barrett voted in favour of churches challenging covid-19 public-health regulations. The latter votes reflected the newest justice’s tendency to defer to those who object to rules that burden their **religious lives**.

But when she had a chance to **extend** this principle—as **strongly demanded** by religious conservatives—she **demurred**. In Fulton v Philadelphia, decided on June 17th, the Supreme Court unanimously sided with a Catholic social-service agency that had cried foul when Philadelphia’s city government sidelined it because the organisation would not approve same-sex couples as foster parents. According to a 1990 precedent, Employment Division v Smith, neutral laws that apply generally do not offend the First Amendment even if they indirectly hamper religious practice. But since Philadelphia allowed exceptions in its anti-discrimination rule (even though the city had not granted any), Chief Justice John Roberts wrote for the court, its ordinance was not “general” and therefore, given the impact on the foster-care agency, violated the constitution.

Despite the **9-0 result**, Fulton was **far from a full win** for the Catholic plaintiffs. The foster-care agency had asked the justices to overrule Smith and clarify that all burdens on the exercise of religion potentially violate the constitution. Yet only **three justices**—led by Samuel Alito, who wrote an irate 77-page concurring opinion—were keen to abandon Smith. Chief Justice **Roberts**, Justice **Barrett** and Justice Brett **Kavanaugh** joined the three **liberal justices** to leave the three-decade-old **precedent intact** and resolve Fulton on **narrow grounds**. In fact, the majority opinion seemed to concede implicitly that anti-discrimination laws denting religious conscience do pass constitutional muster as long as they apply across the board.

A similar **rift** was on display in another **significant case** released on the same day: California v Texas, the third serious attack on the **A**ffordable **C**are **A**ct (aca) to reach the court since 2012. Each time the justices have taken up such a challenge, they have resolved it **in favour** of Barack **Obama’s** health-care law. And the margin has **steadily widened**, **even as** the court has grown more conservative—from 5-4 in 2012 to 6-3 in 2015 and 7-2 this month. During her Senate confirmation hearing last autumn, Democrats pointed to Justice Barrett’s criticism of the earlier decisions and **warned** that she may be **crucial** to **dismantling** the aca at last. This **doomsday** did **not come to pass**: with the exceptions of Justices Alito and Neil Gorsuch, the court again **refused** to strike down the aca and strip 31m Americans of health coverage.

In their counterintuitive challenge, Texas and 17 other Republican states claimed that the law had become unconstitutional when, in 2017, Congress eliminated the financial penalty attached to the “individual mandate”—the requirement that most Americans buy health insurance. In the end, the court did not touch that matter. Instead, the majority ruled that the plaintiffs had not been harmed and thus did not even have standing—ie, the legal right to bring the case.

Technical solutions helped the justices **flick away** other **charged controversies**. Late last year, when Donald Trump and his allies were litigating his electoral loss, the Supreme Court **shot down** two last-ditch lawsuits with deep **procedural flaws**. On December 8th a one-sentence order put a halt to a Pennsylvania state representative’s bid to stop his state from certifying Joe Biden’s win. And three days later, another terse order snuffed out Texas’s attempt to suspend Mr Biden’s victories in Georgia, Michigan, Pennsylvania and Wisconsin. For Stephen Vladeck, a law professor at the University of Texas and Supreme Court litigator, some of the court’s most **important decisions** of the term “may have been its decisions **not to get involved**”.

Yet in the run-up to the election, as emergency requests from Republicans to limit pandemic-inspired voting accommodations rolled in, the justices were active in policing election administration. The court blocked kerbside voting in Alabama, narrowed the window for absentee voting in the Wisconsin primary and reimposed witness requirements for mail-in ballots in South Carolina. These and other orders make up the so-called “shadow docket”—requests for quick relief, dealt with without oral argument or full briefing and often resolved without written opinions or even recorded votes. Mr Vladeck observes that two dozen significant cases have been handled this way since the autumn, compared with 58 cases on the regular docket.

Of the **50 cases** the justices had settled by June 23rd, there had been just **four 6-3 decisions** along **ideological lines** and **24 unanimous rulings**. Over the past three years, the court’s **unanimity rate** has hovered just below 40%, making **this term**, no matter what happens with the eight judgments that have yet to arrive, the **most consensual** since 2016.

But unanimity, as Fulton shows, does not always mean **speaking with one voice**. The three **liberal justices** (Stephen Breyer, Elena Kagan and Sonia Sotomayor) seem to have held their fire; **in return** Chief Justice Roberts crafted a **narrow decision** that gave the Catholic fostering agency a win **without setting a precedent** that would **undermine** gay equality. Justices Alito, Gorsuch and Thomas are **itching** to hasten a **conservative revolution** but, for now, the **liberals**, the **chief** and Justices **Barrett** and **Kavanaugh** are on a more **cautious path** paved with **narrow rulings**. Instead of **split 6-3**, the court is **more like 3-3-3**. Will these coalitions **hold** next year when the justices craft potentially **landmark decisions** on guns, abortion and maybe affirmative action? “We’ll know quite a lot more about the new conservative majority”, Mr Vladeck says, “this time next year.”

### Lithwick ’21 is neg

**A2: DeVeaux**

## Fiat Solves

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