## Off

### 1NC --- Prohibit

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

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

We agree with the trial court's conclusion. By its plain language, section 35704 exempts certain contractors from the application of an ordinance [221 Cal. App. 3d 1573] adopted pursuant to section 35701. Section 35701 permits cities to prohibit the use of city streets by heavy trucks. (See § 35701, subd. (a).) However, the portion of the city's hauling ordinance at issue in this case does not prohibit street use; it regulates users by requiring them to obtain a permit and pay a fee in order to lawfully drive their heavy trucks over city streets. (See Redwood City Code, §§ 20.62-20.74.) To determine the legislative intent behind a statute, courts look first to the words of the statute themselves. In so doing, we must give effect to the statute according to the usual, ordinary import of its language. (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal. 3d 222, 230 [110 Cal. Rptr. 144, 514 P.2d 1224].)

To construe section 35704, which specifically creates an exemption from prohibition of use, to exempt the regulation of that use would violate these cardinal rules of statutory construction. [2] The distinction between a regulation and a prohibition is well understood in municipal law. (See San Diego T. Assn. v. East San Diego (1921) 186 Cal. 252, 254 [200 P. 393, 17 A.L.R. 513].) The term "prohibit" means "[t]o forbid by law; to prevent;-not synonymous with 'regulate.' " (Black's Law Dict. (5th ed. 1979) p. 1091, col. 1.) The term "regulate" means "to adjust by rule, method, or established mode; to direct by rule or restriction; to subject something to governing principles of law. It does not include a power to suppress or prohibit [citation]." (In re McCoy (1909) 10 Cal. App. 116, 137 [101 P. 419].) [1b] Therefore, we are satisfied that section 35704 was not intended to apply to ordinances regulating street use, but only to those prohibiting such use.

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

### 1NC --- Mutual Benefit CP

#### The United States federal government should clarify that agricultural cooperatives practicing undemocratic governance do not meet Section 1 of the Capper-Volstead Act’s mutual benefit requirement.

#### The CP eliminates the worst abusers of the exemption and avoids the politics DA

Castro, ’20 (Eduardo, JD from University of Minnesota Law School 2020, ““For the Mutual Benefit of Members Thereof”: Attacking Capper-Volstead Immunity and Challenging Dairy Cooperative Power,” Law and Inequality: A Journal of Theory and Practice, Vol. 38, Issue 2, https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1636&context=lawineq, bgm)

The language in Section 1 of the Capper-Volstead Act requiring that cooperatives be “operated for the mutual benefit of the members thereof” to receive immunity provides fertile ground to attack claimed antitrust immunity for powerful cooperatives and address the harmful cooperative practices that hurt small and medium dairy farms. This Section presents arguments articulated by the plaintiffs in Allen and Southeastern Milk, as well as new ones. Specifically, potential plaintiffs can, and should, attack claimed immunity of cooperatives on three grounds: demonstrating that a cooperative has taken coercive actions against its own members, that the governance and management of the cooperative has not represented the interest of its members, or that the cooperative’s actions have resulted in financial losses to its members. Furthermore, pursuing litigation against cooperatives and undermining claimed immunity on these grounds is an advantageous and effective way to address the structural inequality that exists in the dairy industry. A. Coercive Acts One method plaintiffs can use to demonstrate that a cooperative is not “operated for the mutual benefit” of its members is by arguing that certain coercive acts taken by the cooperative against its members are per se violations. As discussed in Allen and Southeastern Milk, DFA engaged in a number of coercive practices aimed at its own members. Some of these included unspoken agreements among competing cooperatives to deny business to nonmembers, retaliation against its own members for considering to leave, and the imposition of excessive fees and costs on hauling operations.94 In arguing these actions per se destroy Capper-Volstead immunity, plaintiffs can point to the case law defining “predatory conduct” from Section 2 of the Act to inform a court’s interpretation of the mutual benefit language in Section 1.95 The “predatory conduct” cases illustrate how coercive behaviors against other cooperatives is contradictory to the Capper-Volstead Act, and that this behavior is not for the mutual benefit of its members. Maryland & Virginia Milk Producers stands for the proposition that actions taken by cooperatives to exclude or eliminate producers or cooperative associations through boycotts are not Capper-Volstead protected behavior.96 This behavior is similar to the “unwritten agreements” into which the DFA entered with other cooperatives to ensure that its members could not find business elsewhere.97 Additionally, both Maryland & Virginia Milk Producers and Alexander castigated the ways the cooperative used hauling operations to exert pressure on independent producers and cooperatives as unlawful.98 In the cases of Allen and Southeastern Milk, hauling operations and excessive costs on producers were precisely the ways that DFA retaliated against its own members. And, more broadly, it was the vertical nature of DFA’s operation itself that ensured compliance from its own members. Just like the cooperatives in Maryland & Virginia Milk Producers and Alexander used their vertical structure in a predatory fashion, the manner in which DFA used its vast vertical structure to leave farmers with no other avenues to bring their raw milk to market can be analogized to the existing Section 2 jurisprudence. Potential defendants will likely counter that this case law can only be limited to actions taken by cooperatives against other cooperatives. But as Justice Black stated in his opinion in Maryland & Virginia Milk Producers, the Capper-Volstead Act does not allow cooperatives “unrestricted power to restrain trade or to achieve monopoly . . . .”99 While these cases examine the behavior of cooperatives taken against other cooperatives, the same actions taken by DFA are aimed to compel the subservience of its members to the cooperative. This behavior restrains trade by preventing members from possibly seeking better prices in a different cooperative and maintains DFA’s market dominance. These actions thrusted exacting costs upon cooperative members in the name of preserving the cooperative’s market power. Applying the holdings and reasoning from Section 2 “predatory conduct” cases to actions taken by cooperatives against their own members is one avenue to challenge Capper-Volstead immunity. B. Governance Arguments Potential plaintiffs should also argue that when the management of the cooperative comes at the detriment of individual members, the cooperative has not acted for the mutual benefit of members and should lose Capper-Volstead immunity. As mentioned above, the governance structure of large cooperatives has resulted in little transparency and accountability for poor managerial decisions.100 Such problematic structures have allowed managers to exploit markets, enter into business deals that have questionable benefits for producers, and allocate the profits of these exploits to themselves and their business partners.101 These kinds of practices do not mutually benefit members of the cooperative, and can be challenged to show that cooperatives are not entitled to Capper-Volstead immunity. When considering potential antitrust litigation against a cooperative, there are several aspects of the cooperative’s governance structure plaintiffs should scrutinize to see if management decisions or business ventures are truly being made in the members’ interest. First, potential plaintiffs should examine exactly who is benefiting from the cooperative’s business ventures. As was illustrated in Allen, it appeared that a close associate of the CEO of DFA earned $100 million for his stake in milk plants, but the partner had paid only $6.9 million for the plants two years earlier.102 Often, these kinds of ventures exploit the investment, equity, and debt of the cooperative’s members.103 If management cannot justify these kinds of deals, then cooperative management is not operating for the mutual benefit of its members and cannot be entitled to antitrust immunity. Plaintiffs should also examine deals by cooperatives that significantly expand their interest in processing plants. The U.S. Department of Agriculture does not require that any profits made from joint ventures or processing operations go to producer members of cooperatives.104 Especially when cooperatives enter contracts with processors to offer raw fluid milk from producers at the lowest price in the markets, entering such lopsided ventures is clearly a detriment to producer members.105 When cooperatives enter into joint ventures with processors for interest in processing plants, management inherently enters into a conflict of interest. While the cooperative’s goal is to obtain the highest price for its members’ milk, a processor’s interest is to obtain the lowest price possible from the producer.106 Given that management is not required to share any profits gained in processing, management has great incentive to align its interest with the processors, rather than the individual members. Indeed, DFA’s income from processing comprised 60% of its net income in 2016, which was not shared with farmer members.107 If this occurs, plaintiffs should argue that taking these kinds of significant interests in processing plants will ensure the cooperative does not operate for the members’ mutual benefit. Moreover, this argument is bolstered by Justice Brennan’s concern in National Broiler. In his concurrence, he noted that at a certain point of vertical integration by the cooperative, it no longer meets its intended purpose under the Capper-Volstead Act.108 Brennan’s concurrence went to great lengths to discuss the possible ramifications of allowing processors, whose sole function is processing, to be granted Capper-Volstead immunity. In his opinion, this would lead the “behemoths of agribusiness” to accrue unfettered power and the “exploitation and extinction” of farmers at the hands of “men who control the avenues and agencies” that bring milk to market.109 The DFA litigation makes abundantly clear that Brennan’s concerns were realized: that vertically integrating milk processing and hauling operations led to the “exploitation and extinction” of farmers at the hands of the cooperatives. This kind of integration, therefore, should exempt these cooperatives from Capper-Volstead immunity.110 As noted earlier, cooperatives—even large cooperatives such as DFA—are not required to perform any kind of financial disclosure, nor are their managerial decisions subject to member approval. This lack of requirement or approval makes accessing cooperative business documents difficult. In some cases, cooperatives have been outright hostile to allowing members access to these documents.111 While the applicable litigation procedure seems like a hurdle to making governance arguments against Capper-Volstead immunity, it offers the potential for plaintiffs to obtain these documents in discovery. Courts have affirmed that Capper-Volstead immunity is necessarily a fact-intensive inquiry, and thus, if pleadings are sufficient, cannot be adjudicated on Federal Rule of Civil Procedure 12(b)(6) grounds.112 Therefore, if plaintiffs reach discovery, these documents can be accessed. C. Showing Pecuniary Losses Finally, plaintiffs can show that both coercive actions and governance problems that result in financial losses to members illustrate that the cooperative is not being operated for the members’ mutual benefit. Prime examples are the actions taken by DFA in the Allen and Southeastern Milk cases. In both cases, the plaintiffs alleged that supply agreements that DFA entered into with milk bottling processors ultimately resulted in depressed prices for raw milk.113 The plaintiffs intended to present expert witnesses illustrating the actual financial losses experienced by members from the actions.114 To explain hauling contracts or effects from consolidation, plaintiffs can admit expert testimony to illustrate how they suffered financial losses because of these actions, and therefore, defendants are not acting for the mutual benefit of the cooperative’s members. Finally, following the DFA merger in Allen, where the cooperative took out a significant interest in a number of processing plants, the plaintiffs had demonstrated exactly how this deal hurt their members’ financial interest. Over the alleged antitrust period, the plaintiffs demonstrated that the price for raw fluid milk declined, while processors’ margins saw gains over the same period.115 D. Mutual Benefit Language and Litigation as a Preferred Strategy to Address Inequality in the Dairy Industry Using mutual benefit language to litigate antitrust claims against cooperatives is advantageous for several reasons. First, given the dearth of case law interpreting the language, it provides space for creative arguments and allows litigants to mold claims to address truly egregious practices of cooperatives, like coercive hauling contracts, discrimination based on the size of farmers, and price manipulation. Second, litigants have a statutory interpretation advantage against cooperatives, in that exemptions from antitrust laws must be construed narrowly.116 Finally, it is a measured way to pursue antitrust violations against the cooperatives. Cooperatives are an indispensable part of the dairy industry, and more often than not, truly represent the interests of their members.117 Some have even proposed the use of cooperatives as a way to combat monopoly power.118 Challenging cooperatives through this language can ensure that only cooperatives that truly act against the interests of their members are denied Capper-Volstead immunity. Also, litigation as a strategy to remedy this inequality is much more achievable than the alternative of pursuing change through the political arena. Since the 1970s, the Department of Justice has frequently re-examined the utility of the Capper-Volstead Act to meet the current realities of the dairy industry. Each time, the Capper-Volstead Act remained untouched.119 In fact, when the U.S. Assistant Attorney General for Antitrust went so far as to say that “an examination of whether the law is serving its intended purposes may lead to a conclusion that it is not the right law for the state of the industry at this time,”120 she was met with a “tsunami” of pushback from farmers and legislators.121 Additionally, reform at the local level is unlikely to seriously address the challenges posed by large cooperatives, given that many cooperatives now span several states.122 The “iconic status” of the Capper-Volstead Act among politicians and farmers alike makes policy changes effectively untenable.123

### 1NC --- Politics

#### New BBB’s likely to pass – BUT PC’s key

Cohn 12-24 (Jonathan Cohn, Senior National Correspondent at HuffPost, formerly worked at the New Republic and American Prospect, has written for the Atlantic and New York Times Magazine, has won awards from the Sidney Hillman Foundation, the Association of Health Care Journalists, World Hunger Year, and the National Women's Political Caucus, “Joe Manchin's 'Scaled-Back' Framework May Be Better Than It Sounds,” HuffPost, 12-24-2021, https://www.huffpost.com/entry/build-back-better-joe-manchin-joe-biden\_n\_61c4a435e4b04b42ab699214)

It looks like negotiations over President Joe Biden’s Build Back Better legislation are only mostly dead — which, as any fan of “The Princess Bride” knows, means they are also slightly alive.

This wasn’t so apparent last weekend, when Sen. Joe Manchin (D-W.Va.) went on Fox News to say he was a “no” on the bill that House Democrats passed last month. Shortly afterward, Manchin issued a press release reaffirming his opposition. The statements were stronger than anything he’d said previously, and drew blistering rebukes from a variety of top Democratic officials ― including White House press secretary Jen Psaki and House Progressive Caucus Chair Pramila Jayapal (D-Wash.), both of whom accused Manchin of negotiating in bad faith.

But Biden, who has since spoken directly with Manchin, vowed on Tuesday that “Sen. Manchin and I are going to get something done.” Jayapal also spoke to Manchin and asked him to be more specific about what in the House bill he could support and what he couldn’t. It was a clear attempt to lower the temperature, restart a dialogue and craft a consensus bill that can pass both houses.

That won’t be easy, given the considerable distance between Manchin and his party’s leaders. Manchin has raised a series of objections to specific initiatives, including the direct subsidy to families with parents that Manchin says could create an “entitlement society” but that Democrats see as the centerpiece of their strategy to fight child poverty.

Manchin has also said he objects to the bill’s basic structure. By funding several of the programs for only a few years with the expectation that future lawmakers will renew them, Manchin says, Democratic leaders have disguised the bill’s true cost ― which, he says, is $3 trillion over 10 years, rather than the $1.85 trillion in the official Congressional Budget Office projection.

The best hope for moving forward may lie in an alternative framework that, according to The Washington Post, Manchin gave the White House last week. It would include the bill’s climate and pre-kindergarten initiatives, along with improvements to the Affordable Care Act, funding all of them for the full 10 years of the budget window. It would leave out most of the bill’s other components.

It’s difficult to know how serious this proposal is, given that it’s not public, or whether Manchin sincerely wants to get to “yes.” Even if he does, reconstructing legislation and assembling votes for it at this late stage in the process would be difficult. Progressives in particular are likely to resist endorsing a bill that is already being described in the media as a “scaled-back” version of the House bill.

But that description is not quite right. Whatever Manchin’s motives, whatever the consistency or merits of his views, a bill that includes fewer initiatives but is funded permanently might actually be better as both politics and policy ― as a number of liberal writers and thinkers have been arguing for weeks.

In fact, it’s possible this is the type of bill that Biden and party leaders would have tried passing from the very beginning, if not for the unusual, ultimately fleeting political circumstances that prevailed in late 2020 and early 2021.

The Choices Biden And Leaders Avoided Before

The interval between the final stages of a campaign and the first weeks of a presidential term is typically when a new administration works with congressional leaders to figure out what legislation it will try to pass and when.

That is when former President Barack Obama and his allies decided to spend Obama’s first year seeking legislation on health care (which passed) and climate change (which didn’t). Likewise, it’s when former President Donald Trump and his allies decided to focus on Obamacare repeal (which failed) and tax cuts (which succeeded).

Setting priorities is never easy for a new administration, because it means postponing the push for some initiatives, neglecting the needs those initiatives address and disappointing their champions. That’s why, to this day, so many immigration reform advocates are furious with Obama and Democratic leaders over their failure to take up their cause right away. But an administration has only so much bandwidth, so much political capital and so much time at its disposal. The same goes for congressional leaders. And so in 2009, they decided to focus on a few initiatives, even though they wanted to promote them all.

That wasn’t the approach in late 2020 and early 2021, and the emergency mentality of the pandemic was a big reason why. Economic relief measures were expiring while large swaths of the population remained out of work, unable to pay for basics like food and housing. Key sectors like child care were on the verge of collapse because of closures and staff shortages, panicking families and further undermining the economy. Vaccines were finally available, but distribution was a mess and badly in need of funding.

Into this crisis stepped a new administration that hadn’t yet prioritized among its campaign promises because, until the surprise Democratic Senate victories in Georgia, it hadn’t expected its party would have control of Congress. At the same time, Biden and Democratic leaders in Congress were determined not to make the mistake of Obama’s first year, when Democrats frittered away so much time and political capital trying unsuccessfully to win Republican support for their initiatives.

Instead, before the administration was even two months old, Biden and Democratic leaders passed the American Rescue Plan through the budget reconciliation process, which requires just 50 votes in the Senate. No Senate Republicans voted for it, and Manchin was the last to sign on with what was, in the context of that legislation, a relatively modest concession: giving up on a proposed increase in the minimum wage.

Many within and outside the party began counting on Manchin’s support for the rest of the Democratic agenda, assuming a similar negotiation process would get it done. That thinking shaped the construction of Build Back Better, which included most of the major initiatives Biden had embraced as a candidate, from once-in-a-generation action to slow climate change to a new entitlement for child care. The idea was to reprise not Obama’s or Bill Clinton’s first term, but something more like Franklin Roosevelt’s.

But FDR had larger majorities that, among other things, were willing to commit a lot more government spending to launching new programs. Biden’s opening bid, which he constructed together with Democratic leaders from both houses, envisioned $3.5 trillion over 10 years. Biden’s plan was actually a preemptive compromise, well short of the $6 trillion that Senate Budget Chairman Bernie Sanders (I-Vt.) thought it would take to fund the agenda fully ― and it was still way more than Democrats like Manchin were willing to spend.

That led to a second round of downsizing ― and the decision to start limiting funding for several initiatives to only a few years, in the hopes that their popularity would compel a future Congress to extend the programs before they expire. It would be a huge gamble, all the more so because several programs depend on state officials agreeing to participate. The lack of permanent funding could convince more of them to stay out.

An example is Build Back Better’s two early childhood initiatives, one to revamp child care assistance and one to establish universal pre-kindergarten programs. Successfully implemented, the programs could save some families many thousands of dollars a year, ideally allowing kids to end up in better care and working parents to feel a lot less financial distress.

The bill envisions both initiatives as traditional federal-state partnerships, with Washington putting up most of the money in exchange for states covering the rest and arranging their programs to comply with new federal rules. In its estimate of the program’s cost, CBO assumed a third of states would turn down the child care money and 40% would turn down the pre-K funding, according to an internal document obtained by the People’s Policy Project.

CBO analysts were just guessing at this, and it’s possible more states would participate. It’s also possible fewer would. And the fewer states in the program, the easier it would be for lawmakers to let the program lapse, turning a transformational change into a temporary one.

The Choices Biden And Leaders Face Now

Unless Manchin is bluffing, the only way to get his vote and pass a bill is to pick a few plans to fund fully ― which, inevitably, would mean picking a few plans not to fund at all.

The contours of the reconfiguration would depend heavily on whether it includes an extension of those direct payments to families with kids, the child tax credit, that the American Rescue Plan increased temporarily. It’s arguably the simplest, easiest policy in Build Back Better to implement, since it’s already on the books, and it has already had dramatic effects on poverty. But with a 10-year cost of $1.65 trillion, it would soak up almost all of the money in a $1.85 trillion bill.

Democrats could opt for a smaller version of the credit that would still do a lot of good. Or, if Manchin were amenable, they could pass a one-year extension that would avoid cutting off the money next year, with the expectation that Congress would then work on a bipartisan bill to extend the cuts permanently, using a proposal from Sen. Mitt Romney (R-Utah) as its basis. (Former Democratic Senate aide Adam Jentleson sketched out such a scenario in the Post this week.)

Either option would leave room for most if not all of the climate initiatives ― which most Democrats deem essential because the warming planet is such an existential threat ― and then some combination of the programs to help families with child care and health care.

In figuring out which policies to include, Democrats would have to ponder a number of variables ― like which policies provide the most help to the people most in need, which ones are most likely to be politically sustainable, which ones would be most likely to become law on their own at some later date, and which ones have viable alternatives through executive actions that Biden could take on his own.

And no matter what the decisions, they would be painful for leaders to make ― especially given all the news illustrating the need for these programs, whether it’s natural disasters drawing attention to climate change or a shortage of care workers demonstrating why that part of the labor force needs so much new support.

But the choices at this point may be inevitable in a world where the barest of Democratic majorities depends on support from a senator who has made clear he is wary of too much government spending, who worries openly about assistance recipients using money to buy drugs and who comes from a state that voted for Trump over Biden by nearly 40 points.

And while it’s important to focus on what a reconfigured bill wouldn’t accomplish, it’s also important to think about what it could. A year ago this time, when a governing majority seemed impossible, Democrats and their supporters would have been giddy at the idea of funding even one of Build Back Better’s initiatives. Now they are looking at the possibility of funding several ― an outcome that seems disappointing primarily because, during the early months of Biden’s presidency, there was so much talk of doing so much more.

Of course, even a reconfigured bill might not be able to pass, given the work it would take to craft new legislation and then secure the necessary votes. Getting the current legislation through the House required a herculean effort by House Speaker Nancy Pelosi (D-Calif.), and doing it again might be beyond even her legendary talents, especially with so many Democrats wary of getting burned by Manchin again.

But if the choice Democratic leaders face is between trying to pass a more narrowly focused bill and passing nothing at all, this shouldn’t be a hard call. They have nothing to lose by trying, and quite a lot to gain.

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

Carstensen ‘21

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

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

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

#### PC’s key to global follow-through on climate post-Glasgow summit – impact’s extinction

Chon 11-8 (Gina Chon, Columnist at Reuters Breakingviews, former US Regulatory and Enforcement Correspondent, Financial Times, BS Journalism, Northwestern University, “America’s swing senator can save or scorch planet,” Reuters, 11-8-2021, <https://www.reuters.com/breakingviews/americas-swing-senator-can-save-or-scorch-planet-2021-11-08/>)

The health of the planet hangs somewhere over West Virginia. Joe Manchin, one of the coal state’s senators, is in line to cast the deciding vote on President Joe Biden’s $1.8 trillion “Build Back Better” spending plan. He’ll indirectly be voting on Biden’s ability to influence other countries to fight climate change after the COP26 summit read more.

Biden has faced two main challenges to his spending plan, a companion to the $1 trillion infrastructure legislation Congress approved on Friday. One objection comes from lawmakers worried about the amount of money at stake. After an earlier compromise, climate change initiatives are the biggest chunk of the overall blueprint at $555 billion, more than half of which comes from tax credits for cleaner vehicles and manufacturing. Manchin is already a self-confessed budget worrier.

The other obstacle is unease around specific climate initiatives. Manchin hails from a state with less than 2 million residents, but a heavy reliance on coal. His disapproval helped squash Biden’s proposal for a Clean Electricity Performance Program that would have incentivized utilities to stop using oil, coal and gas. The goal was for 80% of electricity produced in the country to come from clean sources by 2030, compared to the current 40%.

Green-energy tax credits are still on the table and offer a bigger bang for the taxpayer’s buck than the clean electricity program, think tank Resources for the Future estimates. By 2030 they would get the United States to 69% of its electricity coming from clean sources.

Manchin has good reason to keep those tax credits alive. While West Virginia is the second-largest coal producer in the United States and top five in natural gas, according to the U.S. Energy Information Administration, it’s also one of the states most exposed to damage from climate change. More than 60% of its power stations are at risk from a so-called 100-year flood, according to the First Street Foundation.

The senator’s decision will have global repercussions. China, India read more and other countries are only likely to listen to Biden’s pleas to help fight climate change if he looks able to meet such pledges himself. For example, the president wants other countries to help cut methane emissions by 30% this decade, but would still need Manchin’s support to levy fines on U.S. methane-leakers, which is far from guaranteed. For such a small population, West Virginia has a huge responsibility.

**1NC --- No Industry Specific Affs**

**Core antitrust laws are economy wide**

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

C. **A Core Definition**

The Guide uses the **term**s “competition law” and “antitrust law” to refer to **a general domain of law** whose object is to deter **private restraints** on **competitive conduct**. We look more closely at the terms:

1**. “General”—**The laws included are those that are **applicable throughout an economy** and thereby provide a framework for **all market operations** (there are always some exempted sectors). Laws dealing only with **specific markets** (e.g., telecommunication) **do not play that role.**

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

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

### 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 undemocratic governance by agricultural cooperatives.

#### 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.

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

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

**Nam ‘18**

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – No text omitted – but the Table of Contents – which comes after the Abstract - was not included – modified for language that may offend - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

ABSTRACT:

The Federal Trade Commission Act of 1914 (“**FTC A**ct”), **a model** for **many other countries** that set up their **own** competition agencies, combines the **control** afforded by presidential appointment and removal powers over FTC commissioners with an **exceedingly discretionary** mandate. This Article contends that the FTC Act’s outmoded openness to **strong presidential direction**, **where adapted abroad**, has helped detract from **antitrust regulator independence.** Even advanced players in the liberal international economic order **such as South Korea** have made use of the United States’ original blueprint for unitary **executive-stamped** **antitrust** enforcement without sharing a long historical evolution of counterbalancing regulatory norms, e.g. the judicial check that was Humphrey’s Executor v. United States, 295 U.S. 602 (1935).

Strong executive direction **in antitrust enforcement** is particularly suited to capitalist economies helmed by administrations with mercantilist policies, **given their belief that the state and big business must coop**erate in the face of zero-sum international competition. South Korean President Lee MyungBak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces **preventing global convergence** in antitrust enforcement, and of their **roots.**

We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce which ought both to coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. —President Woodrow Wilson, September 1916

[Our companies] are fighting with unfavorable conditions amid competition in the global economy. To do so, they must be allowed to escape various regulations. Let’s take just a half step forward to move beyond the pace of change in the global economy. —South Korean President Lee Myung-bak, March 2008

It is clear that, at the beginning of the 21st century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions. —Joaquín Almunia, Vice-President of the European Commission for Competition Policy, April 2010

The [U.S.] Agencies do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties. Nor do the Agencies employ their statutory authority to further nonantitrust goals. —The U.S. Department of Justice and the Federal Trade Commission, April 1995

INTRODUCTION

The International Competition Network’s founding in October 2001, with the aim of “formulat[ing] proposals for procedural and substantive convergence” among its stated goals,5 sought to usher in a future with more cosmopolitan and coherent global antitrust enforcement. Although U.S. regulatory leadership maintained that “consistently sound antitrust enforcement policy cannot be defined and decreed for others by the U.S., the EU, or anyone else,” many countries (turned) ~~looked~~ to the U.S. **as a role model** while developing their **competition** regimes.6 It is ironic, **then,** that **to this day** a **central obstacle** to the aspired international “culture of competition” **can be found in none other than the influence of the U.S.’s own FTC A**ct.7

American **antitrust** priorities around the time of the legislation’s passage oscillated between tempering trusts and shepherding business to further national economic strength, all towards the domestic interest. They shaped a regulatory environment that **would reemerge abroad** in **many** later-developing countries.

The deepening global retreat from **internationalism** ***and*** free market principles in the present day, with the specter of **trade wars looming**, is exacerbated by nationalist competition regimes that **are derivative of a U.S. model** predating the modern world economy. Domestic critics of open markets often overlook the U.S.’s own past vis-à-vis protectionist governments today. Illiberal or nominally liberal, they walk the kind of dirigiste path once treaded by the American School through the early twentieth century.8

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

**Nam ‘18**

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

National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquín Almunia warned of them years ago,152 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades.153 However, a **creeping** loss of public confidence in open markets—**coupled with** the obstacles to coherent global antitrust enforcement that bear the FTC Act’s influence, **as illustrated in this Article**—risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of **protectionist** silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic “end of history”154 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even **perennial norms** and conventions of **the U.S. competition regime** which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that **carried over abroad** to empower strong executives are likewise playing a paper tiger role domestically of late.155

Protectionist policies designed to compromise market competition—for all its documented excesses and inadequacies—would sap its creative vitality and the concurrent **liberal peace**156 **often taken for granted**. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country’s companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for “our country, right or wrong” protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act’s **formative influence** is not above scrutiny or reproach. **Still-elusive** realization of the liberal economic international order’s intended form will **require** an expanded constellation of **independent competition regulators** empowered to enforce antitrust laws consistently.

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

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

**Langan-Riekhof ‘21**

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

With the trade **and financial** connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off.

Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to **develop nuclear weapons**, as the ultimate guarantor of their security. Small conflicts occurred at the edges of these new blocs, particularly over scarce resources or emerging opportunities, like **the Arctic** and **space**. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, **conflicts became endemic**, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address **climate changes**, little was done to slow greenhouse gas emissions, and some states experimented with **geoengineering with disastrous consequences**.

### 1NC --- 404

**Exclusive FTC means *they investigate* AND address t*hrough non-judicial Administrative proceedings*. Avoids risks from *private causes of action*.**

**Rosch ‘10**

Remarks of J. Thomas Rosch - Commissioner, Federal Trade Commission before the USC Gould School of Law 2010 Intellectual Property Institute Los Angeles, CA - March 23, 2010 - #E&F – modified for language that may offend - https://www.ftc.gov/sites/default/files/documents/public\_statements/promoting-innovation-just-how-dynamic-should-antitrust-law-be/100323uscremarks.pdf

More broadly, however, I want to suggest that Section 5 may supply **an optimal vehicle** for challenging conduct that weakens innovation. The common law that has grown up around Section 2 over the last several decades is deeply ingrained in price theory; that static framework, however good it may be for evaluating short-run harm and quantifiable conduct such as price and output restraints, does not easily lend itself to looking at (considering) whether a party’s conduct has or will dampen innovation or prevent product improvement. Compounding matters is the fact that the difficult line drawing and weighing involved in comparing the likelihood of innovation against the likelihood of quantifiable **anticompetitive harm** is not something that generalist **judges and** **lay juries** are well suited for. Indeed, even the metric for measuring innovation itself remains elusive.

If the Commission proceeds under Section 5, these concerns **largely fall away**. Judging harm to competition against a consumer choice standard not only follows from Section 5’s text and the FTC’s unique institutional architecture, but provides a ready**made** vehicle for evaluating anticompetitive harm from a dynamic perspective. Moreover, by proceeding under Section 5 and suing **in our** Part 3 **administrative process**, the FTC (**and only the FTC)** can have the **first crack** at the hard line drawing and balancing that must occur when one weighs price competition against other forms of more dynamic competition. Arguably by leaving this critical task **to the FTC** and its prosecutorial discretion **in the first instance**, Section 5 allows the Commission **to minimize the threat of false positives** and **shake down lawsuits** that have animated many of the Supreme Court’s more recent decisions. For all of these reasons, **I would not be surprised** if the Commission decided to pursue claims based on dynamic concerns under Section 5 in the coming years, provided we can provide clear guidance to parties about when their conduct will trigger Section 5 review.

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

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

**Baker 15** Jonathan B. Baker - Professor of Law, American University Washington College of Law. “TAKING THE ERROR OUT OF “ERROR COST” ANALYSIS: WHAT’S WRONG WITH ANTITRUST’S RIGHT” - 80 Antitrust Law Journal No. 1 (2015) - #E&F – continues to footnotes #18 and #19 – no text removed. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2333736

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

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

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

#### A new round of US Econ decline kills global economic stability.

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

Bloom ‘21

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

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

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

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

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

Our results reveal two key facts:

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

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

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

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

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

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

Ord ‘20

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

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

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

### 1NC --- States

#### Text: The 50 states and relevant territories should engage in multistate antitrust action and enforcement over prohibitions on undemocratic governance by agricultural cooperatives.

#### 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.

## Regional Food

### Frontline

#### Large farms are a market feature not a failure – only big ag is resilient to disruptions like pandemics. The plan guarantees farm collapse.

Duflock, ’20 (Walt, JD from Santa Clara University School of Law, fifth generation family farm operator in California, “AgriFoodTech Alchemy Issue 8: All trends point to more large farming operations, and government should not put their finger on the scale.” 9/20, https://medium.com/agrifoodtech-innovation-and-commercialization/agrifoodtech-alchemy-issue-8-all-trends-point-to-more-large-farming-operations-and-government-e0e6901be3fe, bgm)

So it is a little disingenuous to watch elected officials and media analysts — both of whom are more than capable of running the same Google searches I ran — now say that (the expected outcome of) more large farming operations is somehow a bad result. It’s exactly the result everyone should have expected and, as mentioned above, every industry struggled with the recent shutdowns just like agriculture. Using the shutdowns to claim big farms are broken and need to get regulated is more than a bit unfair. Farmers, like every other industry, are working hard to make changes as a result of the shutdown impact. For the most part, larger operators have the economics and team in place to adjust to situations like this better than many of the small or medium sized farmers. I believe the consolidation to fewer, larger farms will continue and that the larger farms will continue to be the most adaptable to new regulatory costs and/or new pandemics or things that may create even partial shutdowns in the future. So, think back to the start of the article, and the numerous loud voices pushing for change in farming, potentially including heavy regulation, ending some farming operations altogether, and breaking up others (this outcome is always in play when the “monopoly” word starts getting used). Do we need the government to get rid of large farming operators? Does that make sense given the analysis above? My answer is a resounding no. Agriculture does not need a lot of additional regulations. The agriculture industry (at least the largest agricultural state of California) has already seen an 8x increase in regulatory cost per acre in 12 years. More regulations would just make it harder for small and medium-sized farmers to try and compete effectively because of the 6–7% regulatory cost imposed on them every year. That said, I believe the number of regulations will continue to increase and will accelerate the sell off of small and medium sized operations. As the analysis above shows, legislators knew or should have known the likely result of existing regulations would be to force small and medium-sized farmers to sell their farms. It has never stopped them from imposing more regulations to date, and there’s little indication it will stop them from imposing new ones in the future. Long-term investors will continue to be interested buyers with their three-part thesis of land, water, and operational efficiencies. The government should not interfere with the buy-sell farm land marketplace. Investors are recognizing an under-recognized, over-performing asset class and choosing to invest large dollars with a long-term return timeframe. The marketplace for farmland is operating exactly as designed. So more regulations will lead to more sales and more long-term institutional investors will purchase an increasing share of farmland for sale. It turns out that large farming operations are the only type that can consistently absorb all the increasing regulatory costs and still manage to maintain a business that can turn a profit while staying compliant. How about government breakups? Should farming operations be broken up under US antitrust law? My conclusion — absolutely not. Breaking up large operators into medium-sized operators will do nothing to help consumers and will absolutely be the government choosing to put it’s finger on the scale and artificially control free market outcomes. The reason medium-sized operators struggle is because regulatory costs have grown significantly and it is hard to compete with large players that can achieve economies of scale. Creating multiple medium-sized players out of one or more small players will not make them competitive and will not change the underlying root causes driving the trends. There is also a history of antitrust activities producing significant unintended consequences for decades after the outcomes are implemented, and that would only harm farmers and consumers that buy their products. For me, the answer to the size question on farming operations is clear. Large operators are better prepared to handle all existing and future regulatory changes related to food safety, water quality, air quality, and labor safety. Additional regulations will only make farming more concentrated as smaller players leaving the business will accelerate. Breaking up large players is a bad idea because the medium-sized players created would not be able to overcome the artificial market manipulation of the breakup and underlying trends pushing more consolidation. I believe that antitrust action to break up farming operations would create new medium-sized operations with a higher fail rate and thus have little to no chance of achieving any of the hypothetical wins of the breakup.

#### Family farms dominate now

MacDonald & Hope 18 --- James M. MacDonald, Agricultural Economist, Ph.D in economics from the State University of New York at Buffalo, and Robert A. Hoppe, “Examining Consolidation in U.S. Agriculture”, USDA, March 14th 2018, https://ageconsearch.umn.edu/record/302577/

Family Farms Still Dominate Agriculture

A family farm combines ownership and decision making in a single family. Specifically, a family farm is defined as one in which the person primarily responsible for day-to-day operating decisions—called the principal operator—also owns the majority of the farm business, either individually or in combination with relatives. Family farms account for 99 percent of all U.S. farms and 89 percent of agricultural production, and we see no reduction in those shares over time. Even among the largest farms, those with at least $5 million in sales, family operations accounted for 78 percent of farms and Nonfamily farms include many types of organizations. Many large nonfamily farms are partnerships among a small number of unrelated people, while others are operated by a hired manager on behalf of a family that owns the farm or a larger multifarm business. Large corporations do operate farms, particularly in poultry and hog production, but their primary role in agriculture is to coordinate supply chains through the provision of inputs to family farms, and by contracting with family farms to raise commodities.

The dominance of family businesses is a distinctive attribute of U.S. agriculture and derives from several features of agriculture. While there are some scale economies in agriculture, most can be fully realized by family farms that remain fairly small businesses—enormous size is not necessary to effectively implement agricultural technologies. Agriculture often does require detailed localized knowledge (of soils, pests, and microclimates), and farmers must often act quickly and flexibly to weather conditions. Family business are well suited to develop localized knowledge and to adapt quickly and flexibly.

#### Supply chain resilient

Kenan 20 --- Kenan Insight, nonpartisan business policy think tank affiliated with the UNC Business School, “Seven Forces Reshaping the Economy”, Oct 28, 2020, https://kenaninstitute.unc.edu/kenan-insight/the-unchaining-of-supply-chains-dismantling-disruption-and-risk-in-the-post-covid-world/

In response to these mass disruptions, companies have undertaken full-spectrum analyses of their supply chains [focusing on] ~~with an eye to~~ two primary considerations: agility and resiliency.8

To ensure more agile operations when faced with external shocks, companies are seeking to source critical components (including labor) from more flexible suppliers and bring more of their operations in house.9 As the COVID-19 pandemic has demonstrated, unforeseen events can trigger major disruptions to entire supply chain networks. Many global companies had failed to implement effective business continuity plans, operating instead under the assumption that their supply chain designs would somehow allow materials and services to flow freely around the globe and enable them to continue operations while leveraging the lowest-cost global locations.

In the wake of the pandemic, companies are also looking to increase their resiliency to future shocks. To build up this resiliency, they are finding ways to simplify logistics in order to make abrupt changes easier to manage. Additionally, companies are making operations more robust to external shocks by moving production closer to markets and increasing buffers (e.g., inventories). Notably, in the last year there has been more measurable movement away from manufacturing in China and toward other low-cost Asian countries, near-shoring in Mexico and onshoring in the United States after a decade of growth. These trends started prior to the pandemic and will likely accelerate. From 2018 to 2019, U.S. manufacturing imports from China decreased by roughly $90 billion (a drop of 17 percent).10 In turn, manufacturing imports from other Asian low-cost countries and Mexico rose by $31 billion and $13 billion, respectively.11

Leveraging the Power of Technology

To make their supply chains more agile and resilient, companies will become increasingly reliant on systems based on newer and disruptive technologies that help build smarter supply chains and reduce vulnerabilities during global pandemics and other unforeseen circumstances. Smarter supply chains that leverage the power of artificial intelligence (AI), the internet of things (IoT) and blockchain capabilities, among others, will help companies maintain business continuity amid disruption and uncertainty. This not only allows these companies to closely monitor their supply chains in real time; it also helps them predict possible vulnerabilities and disruptions and understand their up- and downstream impacts, enabling more rapid responses.

Leveraging technology, near-shoring and increased supply chain fluidity will help with rapid responses and issue resolution, limiting disruptions due to unforeseen circumstances. In addition, companies have become more aware of secondary and tertiary supply chain dependencies, especially their reliance on China.12 While the trend in recent years had been toward more efficient supply chains, the focus has now shifted to making those supply chains more robust. The results of these changes will include near-shoring and onshoring more production (and expanding existing domestic facilities), diversifying supplier relationships, investing further in inventories and materials, relying more on sophisticated technological solutions and bringing certain operations in house (through de novo operations or vertical mergers and acquisitions).

#### Market power doesn’t effect pricing

Saitone & Sexton 17 --- Tina L. Saitone, cooperative extension specialist in the agricultural and resource economics department of the University of California, Davis, and Richard J. Sexton, distinguished professor in the department, “Concentration and Consolidation in the U.S. Food Supply Chain: The Latest Evidence and Implications for Consumers, Farmers, and Policymakers”, Economic Review (Kansas City) 2017 Vol.102, https://www.kansascityfed.org/documents/764/Concentration\_and\_Consolidation\_in\_the\_U.S.\_Food\_Supply\_Chain\_The\_Latest\_Evidence\_and\_.pdf

As we have shown in the prior sections of this paper, relevant measures of market concentration are elusive given the manner in which such statistics are compiled and reported, as is evidence on the importance of market power in the food chain. A third, less frequently discussed but contentious issue is the consequences of market power when it is present. Economists’ traditional thinking about the consequences of buyer or seller market power is based on a simple partial equilibrium microeconomic model that may not be realistic for most modern markets. The standard model prescribes that a firm with market power strategically reduces its sales (seller power) or purchases (buyer power) in recognition that its actions influence price. Thus, quantities get reduced below the socially optimal (specifically, competitive) level, creating a deadweight or efficiency loss also known as the Harbarger triangle. However, the magnitude of these triangles is very small relative to the market’s total surplus for moderate levels of market power of the magnitude found in most empirical studies of specific food industries (Alston, Sexton, and Zhang; Sexton 2000).13

A second point is that these deadweight or efficiency losses emerge only because firms with market power are presumed to be constrained to charge or pay a simple linear (nondiscriminatory) price to all customers or suppliers. Such pricing schemes reflect traditional spot or cash markets that are in decline or nonexistent in many of today’s agricultural markets and becoming rarer in retail markets. Deadweight losses represent “money left on the table” that a firm with market-power access to multiple pricing instruments can reduce or eliminate. Examples of multipart pricing at retail are membership fees, price discounts associated with club or loyalty cards, and even strategic use of sales, coupons and pricing for similar products with perceived heterogeneous qualities such as store versus national brands. These are all examples of what economists call price discrimination. The multitude of information on consumers that retailers now gather and analyze—and improved technologies for tailoring prices to specific customer segments—facilitate such practices. Retailers extract more surplus from consumers, but they also diminish any deadweight or efficiency losses associated with market power.

In agricultural product procurement markets, contracts often specify both prices and quantities and also contain provisions for price premiums or discounts for a variety of factors. Contracts may also tailor individualized prices to specific producers. Such devices attenuate the traditional link between price paid and quantity received.

Given evidence that market power in agriculture is modest at best— and the various mechanisms available to firms to obviate deadweight or efficiency losses—the inescapable conclusion is that efficiency losses in the United States due to agricultural market intermediaries’ market power are inconsequential and of no policy relevance.

## Populism

### Frontline

#### Large farms aren’t to blame

Park and Deller, ’21 (SooJin, PhD Student, Department of Economics, University of Wisconsin-Madison, professor in the Department of Agricultural and Applied Economics at the University of Wisconsin-Madison and a Community Economic Development, “Effect of farm structure on rural community well-being,” Journal of Rural Studies, Vol 87, October, https://www.sciencedirect.com/science/article/abs/pii/S0743016721002783, bgm)

The main goal of this research has been to analyze how the recent structural changes in the US agricultural industry has generally affected community well-being. The Goldschmidt hypothesis suggests that a decreasing number of small farms and an increasing number of big farms would have a negative influence on the community. The empirical results of our research, rather than support the Goldschmidt hypothesis, show that the structural changes have mixed effects on community wellbeing. The analysis indicates that higher concentrations of larger farms result in higher earnings per job, lower home ownership rates, lower business start-up rate, and better health outcomes. The changes in farm size over 20 years, on the other hand, seems to have had no discernible impact on community well-being. Our empirical analysis, with its consideration of farmer characteristics, suggests that current raw data do not support the Goldschmidt hypothesis. The results show that the more farmers there are who are not living on farm, not only is their community’s economic well-being is worse off, but also it is the case that rental-market financial stress is lower and days involving mental-health issues are fewer. Changes in farm-ownership characteristics also seem to have a mixed impact on community well-being over time. These results point to several observations. First, while consolidation of farms into larger units is continuing, the rate has slowed down significantly over the last few decades, and by some measures plateaued after the farm crise of the 1980s when the last wave of significant farm consolidation occurred. Second, while growth in the largest farms appears to have slowed, growth in the smallest farms has accelerated. This could be the result of the local-foods movement opening marketing opportunities for small farms. Another explanation is the growth in what could best be described as “hobby” farms, many of which, for example, focus on specialty crops such as hops for local beer production. Third, there is a clear pattern in the “hollowing out” of the middle of farm size distribution: the “average-size farms” are slowly disappearing. Fourth, because our results vary across the different measures of community well-being, when thinking about how farm structure impacts local communities, researchers need to be more cognizant of what they mean by community well-being.

#### But, the plan makes it worse – large farms pay better and make food cheaper

Watson and Winfree, ’21 (Philip, Associate Professor of Agricultural Economics and Rural Sociology at the University of Idaho, and Jason, Associate Professor of Agricultural Economics and Rural Sociology at the University of Idaho, “Should we use antitrust policies on big agriculture?” Applied Economic Perspectives and Policy, Issue Forthcoming, Published online 6/17, https://doi-org.proxy1.cl.msu.edu/10.1002/aepp.13173, bgm)

Income inequality has been a primary goal of some advocates of an increase in antitrust enforcement. However, while helping small firms has been an ongoing economic policy goal in the United States, using antitrust law is likely an inefficient way to achieve income equality (Shapiro, 2018). In agriculture, this discussion is typically framed as large agricultural firms versus small agricultural firms. While the USDA has implemented numerous programs explicitly deigned to benefit small, beginning, and family farms (Katchova & Ahearn, 2015), there is sharp criticism that large farms are profiting at the expense of small farms (Bruckner, 2016). However, it is not clear whether using antitrust law is the most effectual mechanism to achieve this goal. Even if we are able to shift market shares from large producers to small producers, there are a number of problems in achieving income equality. First, even ignoring consumers, it is not clear whether protecting small and/or family farms would increase income equality among agricultural producers. For example, large firms do not necessary have higher incomes per employee (Brown & Medoff, 1989). Low-income workers may bear some of the burden of breaking up large agricultural firms. In other words, it is quite possible that there is a negative correlation between profit per worker and the size of the farm, in which case protecting smaller farms may worsen income inequality. Second, it has been shown that the incomes of small farms are, on average, higher than non-farm incomes (Lusk, 2016). This implies that food consumers are poorer than food producers. Ma et al. (2021) show that for developing countries, consolidation into larger farms can have an overall positive effect while hurting rural households. However, in developed countries, it is not obvious that market concentration exacerbates overall income inequality. It is likely that increasing agricultural output prices to help small farmers will hurt an even more vulnerable population of low income food consumers. If the goal is income equality, certainly the poorest are of the utmost importance. Given Engel's law and the obvious importance of food, changes in the food supply can heavily influence the well-being of the most poor. In this situation, protecting smaller farms will exacerbate rather than alleviate the problem of income inequality. Third, there may be a misconception about what consolidation means. For example, according to the USDA, in the United States in 2019, almost 98% of farms were family farms, and 90% are small family farms with less than $350,000 in gross cash farm income. So, many of the farms that are being consolidated are being consolidated into other family farms. While some of the rhetoric may focus on large corporations in the agricultural industry, policies are likely to have a negative effect on some family farms as well.

#### Rural blight inevitable

Swenson, ’19 (David, Associate Scientist of Economics, Iowa State University and lecturer in the School of Urban and Regional Planning at the University of Iowa, “Why America’s rural areas are facing an irreversible decline,” 5/10, https://www.weforum.org/agenda/2019/05/most-of-america-s-rural-areas-are-doomed-to-decline, bgm)

The U.S. has been consistently urbanizing, especially for the past 100 years. Technology advances in manufacturing, agriculture, mining, fishing and forestry accelerated migration from rural to urban areas. Over time, incremental innovations in those original core industries required fewer workers, further boosting migration away from rural areas. Much of the blue-collar and middle-income shares of more rural economies dwindled as a result. Small and medium-sized urban areas – and the rural counties that are linked to them – are left with transportation, public works, housing and commercial bases that they struggle to maintain. Inevitably, blight ensues. Most micropolitan and rural communities have no viable economic Plan B, so I believe that the majority of them are fated to dwindle until eventually reaching some level of stability. Federal and state governments provide them fresh water and wastewater treatment assistance, health care access, subsidized transportation and workforce training, but none of that alters the underlying forces inhibiting their collective prospects for growth. Every core industry originally undergirding these areas continues to shed jobs. Meanwhile, the nation’s metropolitan cities continue to accumulate greater opportunities for meaningful jobs, career advancement and enhanced qualities of lives. As a researcher who has studied rural economies for more than three decades, I urge policymakers to seriously consider the fact that most rural areas will not grow. It is important to develop policies that assure access to necessary public services, connect rural residents to modern technologies for the sake of participating meaningfully in modern society and safeguard that which is good and appealing about these less populated places.

#### Innovation will prevent total collapse

Harris, ’20 (Chris, Senior Program Officer, Entrepreneurship, Kauffman Foundation, “After generations of disinvestment, rural America might be the most innovative place in the U.S.,” 12/14, https://www.kauffman.org/currents/rural-america-most-innovative-place-in-united-states/, bgm)

Stop trying to save Rural America. Efforts to write it off as “disappearing” are complicated by the 60 million Americans who call a rural community home. We must recognize that innovation, diversity of ideas and people, and new concepts don’t need to be imported to rural communities – they’re already there. Rural entrepreneurs and community leaders have always, by necessity, been innovative. Rural communities have faced some harsh realities in the last generation: they’ve seen manufacturing move overseas, farming monopolized by big outfits with only 5% of rural residents working in agriculture, generational migration to bigger cities, school consolidation, and the absence of basic community resources such as health care and broadband, and, more recently, threats to the lifeline that is the U.S. Postal Service. This, and the pandemic. COVID-19 has not just exposed the challenges faced in rural America; it has made plain that there is no longer comfort in believing there is time to find eventual solutions. Rural leaders, entrepreneurs, and communities must now move with urgency to implement the solutions they have long understood to be necessary: Rebuild critical systems pushed to their limits through years of under-investment. This is an opportunity for rural leaders, governments, and philanthropic funders who aren’t afraid to break with long-standing assumptions about the inevitability of rural decline. The challenges that existed before COVID-19 are highly visible in times of emergency. They will continue after the pandemic, but for how long is contingent on the response to this demonstration of the cost of broken systems and inequitable practices. The things we always said we should do someday – rural broadband, healthcare, and entrepreneurship support, addressing food and news deserts, providing childcare, and developing capital alternatives to banks – have quickly become the things we should have done yesterday. Rather than defining rural communities by the progress that is believed to have stopped, we can instead choose to define them by the progress they’ve made despite massive disinvestment and, perhaps, by the progress they could make if they had the support.

#### Racial fear and resentment is a huge alt cause

Rohac, et al., ’18 (Dalibor Rohac, research fellow at the American Enterprise Institute (AEI), where he studies political economy of the European Union, a visiting fellow at the University of Buckingham in the United Kingdom, and a fellow at the Institute of Economic Affairs in London, Liz Kennedy, senior director of Democracy and Government Reform at the Center for American Progress, and Vikram Singh, senior fellow for National Security at the Center for American Progress, “Drivers of Authoritarian Populism in the United States,” 5/10, https://www.americanprogress.org/article/drivers-authoritarian-populism-united-states/, bgm)

To be sure, economic factors alone do not account for the rise of authoritarian populism in the United States. A recent study from Diana C. Mutz at the University of Pennsylvania found that the fear of losing status was a more significant factor than economic anxiety for white Trump voters in their decision to vote for Donald Trump in 2016.41 The loss of status among groups experiencing economic decline can furthermore exacerbate cultural and racial resentment. At the heart of exclusionist authoritarian populist narratives is a distinction between a corrupt elite and those who belong to the relevant group of supposedly good, ordinary people. The distinction between the two is not necessarily based on ethnic or racial grounds, but it frequently is. John Judis, author of The Populist Explosion, contrasts populists whose politics convey “the bottom and middle, arrayed against the top” with populists who champion “the people against an elite that they accuse of favouring a third group,” for example, immigrants, Muslims, or African Americans.42

## Modeling

### Frontline

#### Congratulations, you misread your solvency advocate and this whole advantage is a disad to the aff.

#### Their authors’ argument is that countries are modelling the exemption, which is leading to but that predatory interests are trying to attack it – that’s what the plan does! MSU reads (go) green

Barnes 21—(\*JD from George Washington University; \*\*JD from Fordham University, former Vice-Chair of the ABA Antitrust Section’s Joint Conduct Committee). Donald M. Barnes & Jay L. Levine. April 2021. “Farmer Cooperatives "Take Cover": The Capper-Volstead Exemption is Under Siege”. Arkansas Law Review, Volume 74, Number 1. Accessed 10/2/21.

\*edited for language\*

International efforts have been underway to aid the development of farmer cooperatives and the laws that protect their activities. In a May 2012 report, the European Competition Network (“ECN”) noted concerns about price volatility and competitiveness in food production and distribution.192 Some national competition authorities believe that cooperation among producers and the creation of cooperatives would increase competition in the food sector.193 By 2013 these concerns led to the European Union’s adoption of significant reforms to its Common Agricultural Policy (the “CAP”) that set new rules for allowing joint-selling by producers in the agricultural sector.194 In November 2015, the European Commission adopted guidelines on potential competition issues arising in the implementation of these new rules as they pertain to the olive oil, beef and veal, and arable crops sectors.195 CAP reform removed production restraints to encourage farmers to base their production decisions on market signals.196 The legal framework under CAP reform also “extend[ed] the possibility for collective bargaining (in some [agricultural] sectors) and delivery contracts (for all [agricultural] sectors) to [p]roducer [o]rganisations, their [a]ssociations and Inter Branch Organisations.”197

The U.S. Overseas Cooperative Development Council (funded by USAID) is conducting a major initiative called the “Cooperative Law and Regulation Initiative” (“CLARITY”).198 Part of that initiative involves providing assistance to help national cooperative movements organize themselves, and helping to evaluate and improve their cooperative laws.199 CLARITY points to the Capper-Volstead Act as an exemplar for implementing exemptions from competition law that would otherwise prohibit certain joint action between businesses for cooperatives.200

VI. CONCLUSION

The more things change, the more they stay the same. As true now as it was in the 1920s, the number of farms continues to decline. Farmers and their cooperatives are still at the mercy of power buyers, Mother Nature, and the international marketplace. There is still a large imbalance of bargaining power. In short, the same conditions and concerns that existed at the time the Capper Volstead Act was passed continue to this day.

As the Supreme Court stated in Maryland and Virginia Milk

Producers Association v. United States:

We believe it is reasonably clear from the very language of the Capper-Volstead Act, as it was in § 6 of the Clayton Act, that the general philosophy of both was simply that individual farmers should be given, through agricultural cooperatives acting as entities, the same unified competitive advantage–and responsibility–available to businessmen acting through corporations as entities.201

That rationale continues to apply today. Nevertheless, power buyers and other opportunistic interests continue to enlist the courts in eroding the basic foundations of the exemption, and the implications will have far reaching effects. The bargaining power and economic viability of farmers and their cooperatives will be undermined here and abroad as foreign governments and their courts follow the lead of the United States. Aggressive legal attacks on the very foundations of cooperatives themselves are being waged and hope now rests with the higher courts or Congress.

#### The article’s introduction makes it very clear it goes neg

Barnes and Levine, ’21 (Donald M., partner in the Washington, D.C. office of Porter Wright Morris & Arthur and the Co-Chair of the Antitrust and Consumer Protection Law Practice Group, Chair of the National Council of Farmer Cooperatives’ Antitrust Subcommittee, and Jay L., partner in the Washington, D.C. office of Porter Wright Morris & Arthur and Co-Chair of the Antitrust and Consumer Protection Law Practice Group, past Vice-Chair of the ABA Antitrust Section’s Joint Conduct Committee, “Farmer Cooperatives "Take Cover": The Capper-Volstead Exemption is Under Siege,” Arkansas Law Review, Vol 74, No 1, https://scholarworks.uark.edu/cgi/viewcontent.cgi?article=1127&context=alr, bgm)

I. INTRODUCTION There can be little dispute that food production is of vital interest to any nation’s security and economy. For this reason, the United States Congress, like many other legislatures around the world, has accorded special treatment to the agricultural industry, and particularly to farmers. One example of this special treatment is the Capper-Volstead Act, which provides farmers with immunity from antitrust liability for joint conduct undertaken by and through an “association” of producers.2 As the country transformed itself from an agrarian economy to a more industrialized and urban economy, an imbalance in bargaining power grew between farmers, on the one hand, and their customers—processors or distributors (e.g., large supermarkets)—on the other.3 Farmers were at risk of going bankrupt or being forced to sell their land.4 This untenable situation imperiled the nation’s food supply and risked raising consumer prices for food staples to unacceptable levels.5 Enacted in 1922, the Capper-Volstead Act was intended to correct this power imbalance by allowing farmers to associate with each other and collectively market their products.6 Indeed, because some of the more essential functions of agricultural cooperatives implicate the antitrust laws, the Capper-Volstead Act has been key to allowing farmers to achieve their objectives, and has even been referred to as the “Magna Carta” of agricultural cooperatives.7 Notwithstanding the historical centrality of the CapperVolstead Act to the efficient functioning of agricultural cooperatives, the protections afforded by the Act have been under increasing attack in private antitrust litigation. In recent years, class actions have been filed against mushroom, potato, egg, and dairy farmers, and their cooperatives. 8 In addition, many middlemen, including large supermarkets and other power buyers, have opted out of these classes and chosen to bring their own actions. These “opt out” plaintiffs include some of the largest supermarket chains in the world—the very type of “power buyer” middlemen whose disproportionate bargaining leverage motivated Congress to enhance and protect the collective bargaining power of farmers by passage of the Capper-Volstead Act.9 Each of these antitrust cases involve conduct that, arguably, is immune under the Capper-Volstead Act.10 Yet, the plaintiffs in these actions challenge the application of the Capper-Volstead Act and raise issues that go to the heart of the antitrust exemption, potentially exposing thousands of agricultural cooperatives and their members to crippling damages awards. While the Capper-Volstead Act is often referred to as arcane,11 the number of antitrust suits filed in the past ten to fifteen years against farmers and their cooperatives have engendered more scrutiny of this legislation than at any other time in the past. This Article endeavors to explain the current issues facing the Capper-Volstead Act and the potential consequences of judicial decisions that rob it of its effectiveness. We begin with a description of the key cooperative antitrust exemption statutes and their origins, and then proceed to address the pending legal challenges and the threats they pose to the exemption and to cooperatives and farmers themselves.12 We also consider whether these decisions may have consequences beyond the United States’ borders.13

### BIOTECH

#### Biotech resilient - structural factors in the face of price controls

Booth 16 [Bruce, partner and focuses on novel biopharmaceutical products, therapeutic platforms, and innovative biomedical technologies. Currently chairman of AvroBio, miRagen Therapeutics, Nimbus Therapeutics, Rodin Therapeutics, and Quartet Medicine, and also serves on the boards of Lysosomal Therapeutics, Magenta Therapeutics, Unum Therapeutics, and Zafgen. blogs about biotech and venture capital topics at LifeSciVC.com, which is syndicated on Forbes. He has published numerous scientific papers and has authored various biotech venture capital review articles, including several in Nature Biotechnology. “This Time May Be Different: Today’s Biotech Market In Context” 1-7-16 https://lifescivc.com/2016/01/this-time-may-be-different-todays-biotech-market-in-context/]

Conclusion

I’ll leave specific stock predictions to other pundits, but do believe there’s strong support for the premise that structural changes in the industry have enabled a “new normal” today that is intrinsically a more robust biotech investing climate.

While we certainly face common cyclic issues like expansionary valuations, volatility, and pricing concerns, there’s multiple reasons to believe we’ve matured as a sector, and along with that comes deeper, more sustained capital market access that can fuel the continued advancement of new medicines.

This time may indeed be different.

# 2NC---Fullertown R3

## T

## CP---Mutual Benefit

### 2NC---Solvency

#### The mutual benefit language is sufficient to weed out the bad cooperatives

Castro, ’20 (Eduardo, JD from University of Minnesota Law School 2020, ““For the Mutual Benefit of Members Thereof”: Attacking Capper-Volstead Immunity and Challenging Dairy Cooperative Power,” Law and Inequality: A Journal of Theory and Practice, Vol. 38, Issue 2, https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1636&context=lawineq, bgm)

Some may argue that the dearth of case law interpreting the meaning of the mutual benefit language demonstrates that this part of the Capper-Volstead Act is inconsequential. That is simply not the case. The structure of Section 1 of the Act makes clear that “operat[ion] for the mutual benefit” of producers, even though not explicitly enumerated, is a required element to receive Capper- Volstead protection.124 The legislative history of the Act and its subsequent jurisprudence reinforce this notion. The legislative history of the Capper-Volstead Act shows that it was intended to protect small, individual producers from greedy “middlemen.” One express concern during the bill’s debate was that individual farmers were prone to financial exploitation, and therefore, organizing in this manner would improve their market position.125 The mutual benefit language ensured that individual producers would truly reap the benefits of the cooperative, not suffer at its hands. Indeed, the legislative history demonstrates that some current-day cooperative management would almost certainly draw the ire of the Capper-Volstead Act’s drafters. One Senator stated during the bill’s deliberations that “a policy cannot always exist under which those who toil must toil at a loss and contribute to those who neither toil nor spin, but sit in their palaces at mahogany desks and draw in the rake-off in the shape of a middleman’s profit.”126 During the time of the allegations against DFA, its CEO made $31.6 million during his seven-year tenure.127 Moreover, the case law has paid special attention to the original intent of the Act to protect small farmers. In *National Broiler*, Justice Brennan stated “[i]t was the disparity of power between the units at the respective levels of production that spurred this congressional action.”128 As Justice Marshall laid out in his majority opinion in *Case-Swayne*, the statute was crafted with small dairy farmers in mind: “qualifying associations [should] be truly organized and controlled by, and for, producers.”129 The Court realized that the drafters were well-aware that cooperatives could potentially operate for interests other than “the mutual obtaining of a fair return to their members . . . .”130 While perhaps the drafters did not contemplate that the management of cooperatives would generate upwards of $31.6 million in salaries and pursue deals largely to enrich management and shareholders,131 the purpose of the Act is unequivocal. The Act was meant to help protect the model of “small, individual, economic farming units,” and the mutual benefit language embodies that sentiment.132 Thus, the language is an indispensable provision of the Act and can be the basis for valuable litigation.

## CP---Section 5

### 2NC---Condo

## Food

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

#### Ag supply chains are resilient

Holmes 21 --- Bob Holmes, science writer in Edmonton, Canada, and the author of Flavor: The Science of Our Most Neglected Sense, “How has the pandemic strengthened the global food supply chain?”, Knowable Magazine, 03.25.2021, https://thecounter.org/pandemic-global-food-supply-chain-covid-19/

Most of us won’t soon forget that disconcerting moment last spring when grocery store shelves were suddenly bare where the flour, pasta and other staples should have been. The news told of farmers dumping milk — nearly 4 million gallons a day, by one account — smashing eggs and euthanizing chickens that they couldn’t get to market. Crops worth billions of dollars were wasted, some rotting in the field, as restaurants and other food service businesses, shuttered by lockdowns, stopped buying.

The problem was short-lived, fortunately, as growers pivoted to new buyers, shippers and packers adapted, exports resumed and the food system — the complex web of players that move food from farm to fork — came back to life. “Overall, the food system has been quite resilient,” says Johan Swinnen, director general of the International Food Policy Research Institute, a leading international think tank. “It’s hard to imagine a bigger shock than we’ve had now. And despite that, if you look at the rich countries, even countries like China, the food supply has not been a problem almost anywhere.”

The food system didn’t break, but it did flinch — and the public noticed. “People experienced for the first time that you can’t take for granted that whenever you need something, it’s there on the market shelf,” says Matin Qaim, an agricultural economist at the University of Göttingen in Germany.

For Qaim and other experts, the experience with Covid-19 can be viewed as a kind of stress test for our global food system, highlighting its strengths as well as its weak points. It’s helping them focus on what needs to change to build a truly resilient system. And we’re likely to need that resilience soon, they warn, as climate change makes droughts, floods, windstorms and other extreme events more common. Those challenges, they say, will require changes in where and how we grow food, and in the way society structures the supply chains that keep food, fertilizer and other commodities moving around the world.

### 2NC---AT: Readiness !

#### Readiness low now---past budget cuts and CRs thump.

Gooding 20 (Mike Gooding, Reporter, “Report links budgetary delays with a decline in military readiness,” 12/03/20, 13 News Now, <https://www.13newsnow.com/article/news/national/military-news/gao-links-budgetary-delays-and-military-readiness-decline/291-b29525a7-9f1d-449a-acf3-8fc26ce85b3e>, GBN-TM)

When it comes to Navy ships, planes, and the preparedness of the troops, the Government Accountability Office paints a pretty grim portrait. A new report this week states, "The Navy and Marine Corps are beginning to address the causes of their readiness decline, but recovery will take years." At issue: years of inconsistent budgets from Congress, and reliance upon temporary Continuing Resolutions, causing maintenance delays that keep ships in dry docks or planes on the ground, reducing the availability of these forces for training and operations. The problem dates back to the Budget Control Act of 2011, which imposed a practice known as sequestration which brought about arbitrary, 10 percent cuts across the Department of Defense. "We do Continuing Resolutions, it wastes money," said Rep. Rob Wittman (R-Virginia, 1st District). "It also puts our military further and further behind because it creates uncertainty." Wittman, who serves as ranking member of the House Armed Services Seapower and Projection Forces Subcommittee, says the temporary funding mechanisms are bad for readiness and for the industrial base which supports the military. "Citizens should be up in arms over Continuing Resolutions because they are an abdication of Congress' responsibility," he said. In recent years, there have been the well-documented deadly mishaps involving the USS McCain and USS Fitzgerald. And as far as military aviation, accidents have killed 224 pilots or aircrew, destroyed 186 aircraft, and cost more than $11.6 billion just since 2013. "Continuing Resolutions, the failure to pass a defense budget by the start of the fiscal year causes serious readiness problems," said retired Navy captain Joe Bouchard, who served as commanding officer of Naval Station Norfolk. "The impact on readiness, the impact on the ability of the fleet to carry its national security mission is strongly, seriously impacted."

## Populism

### 2NC---A/C

#### Rural blight inevitable

Swenson, ’19 (David, Associate Scientist of Economics, Iowa State University and lecturer in the School of Urban and Regional Planning at the University of Iowa, “Why America’s rural areas are facing an irreversible decline,” 5/10, https://www.weforum.org/agenda/2019/05/most-of-america-s-rural-areas-are-doomed-to-decline, bgm)

The U.S. has been consistently urbanizing, especially for the past 100 years. Technology advances in manufacturing, agriculture, mining, fishing and forestry accelerated migration from rural to urban areas. Over time, incremental innovations in those original core industries required fewer workers, further boosting migration away from rural areas. Much of the blue-collar and middle-income shares of more rural economies dwindled as a result. Small and medium-sized urban areas – and the rural counties that are linked to them – are left with transportation, public works, housing and commercial bases that they struggle to maintain. Inevitably, blight ensues. Most micropolitan and rural communities have no viable economic Plan B, so I believe that the majority of them are fated to dwindle until eventually reaching some level of stability. Federal and state governments provide them fresh water and wastewater

#### Racial fear and resentment is a huge alt cause

Rohac, et al., ’18 (Dalibor Rohac, research fellow at the American Enterprise Institute (AEI), where he studies political economy of the European Union, a visiting fellow at the University of Buckingham in the United Kingdom, and a fellow at the Institute of Economic Affairs in London, Liz Kennedy, senior director of Democracy and Government Reform at the Center for American Progress, and Vikram Singh, senior fellow for National Security at the Center for American Progress, “Drivers of Authoritarian Populism in the United States,” 5/10, https://www.americanprogress.org/article/drivers-authoritarian-populism-united-states/, bgm)

To be sure, economic factors alone do not account for the rise of authoritarian populism in the United States. A recent study from Diana C. Mutz at the University of Pennsylvania found that the fear of losing status was a more significant factor than economic anxiety for white Trump voters in their decision to vote for Donald Trump in 2016.41 The loss of status among groups experiencing economic decline can furthermore exacerbate cultural and racial resentment. At the heart of exclusionist authoritarian populist narratives is a distinction between a corrupt elite and those who belong to the relevant group of supposedly good, ordinary people. The distinction between the two is not necessarily based on ethnic or racial grounds, but it frequently is. John Judis, author of The Populist Explosion, contrasts populists whose politics convey “the bottom and middle, arrayed against the top” with populists who champion “the people against an elite that they accuse of favouring a third group,” for example, immigrants, Muslims, or African Americans.42

### 2NC---AT: Populism !

#### Civil war impact is a joke---January 6th thumps

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

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

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

## Modelling

### 2NC---T/L

#### Seriously, their author has been hyping Capper-Volstead for decades

Barnes and Ondeck, ’97 (Donald M. and Christopher E., “The Capper-Volstead Act: Opportunity Today and Tomorrow,” paper was presented at the National Council of Farmer Cooperatives' National Institute on Cooperative Education, Annual Conference, Pittsburgh, PA. August 5, 1997, https://web.archive.org/web/20121230023910/http://www.uwcc.wisc.edu/info/capper.html, bgm)

Today the Capper-Volstead Act is as important as ever, and the cooperatives that have flourished under its protection continue to engage in new activities to provide value to their members. From the possibility of a nationwide dairy federation to the new generation of small dairy cooperatives springing up in the Upper Midwest, the Act continues to provide limited immunity to both large and small cooperatives, and continues the success of its mission to help farmers meet the challenges of our ever changing agricultural economy.

### 2NC---AT: Biotech !

#### Many thumpers outweigh pricing

Urquhart 16 [Lisa, Journalist with more than a decade of experience, joined Evaluate's EP Vantage editorial team after seven years at the Financial Times in London, including time as the biotechnology correspondent, where she generated a number of exclusives. An active contributor to industry panels and articles, Lisa has also commented on the pharmaceutical industry on both television and radio. Jonathan Gardner, Deputy News Editor, extends the editorial reach of EP Vantage with his wealth of knowledge on the US primary healthcare market and regulatory affairs. Jonathan joined EP Vantage having worked as freelance journalist for a number of respected healthcare publications, including Elsevier Global Medical News. Jonathan also served as communications manager for Health Affairs Journal and as bureau chief for Modern Healthcare. Established in 1996, Evaluate Ltd is the trusted leader in high quality life science sector analysis and consensus forecasts to 2020. “Pharma & Biotech 2015 in Review” 3-16 http://info.evaluategroup.com/rs/607-YGS-364/images/epv-pbr15.pdf]

Attempts at crystal ball gazing have been made even more difficult by the fact that it was not pricing and reimbursement, or drug failure that eventually burst the biotech bubble. Instead it was the wider macro-economic environment, including China’s stalling growth, the fall in oil prices and the continued crisis in the Middle East that did what logic had failed to accomplish.

“The thing about investor behaviour in a period where share prices are going up is the illogical expectation that because share prices have gone up a lot for the last five to eight years they will continuing to go up for much longer than that,” says Mr Smith of Mann Bioinvest.

But with the air now out of the bubble, the industry is left facing not only a period of uncertainty, as valuations find their level, but other issues that will be harder to ignore in a downward market.

The noise around the pricing debate has not gone away, and while the eventual winner of the US presidential elections will have little or no influence on drug prices, the subject will continue to weigh on sentiment. Pharmacy benefit managers, however, do have influence and they will carry on flexing their muscles in negotiating lower prices, especially among drug classes with high competition, or products that offer only offer incremental benefits. Even drugs with clear advantages, but high prices, could see pushback, or more pay for performance reimbursement deals.

Politically, while the threat of a Grexit has all but subsided, there is now an even more serious danger of a Brexit. The effects of the UK leaving the European Union are hard to predict, but it will do little to ease jittery international markets.

The coming year will also see more biosimilar entrants knocking at the door of the US healthcare system, and despite the doomsaying by originators, their uptake might be surprising, especially if payers like Express Scripts have anything to do with it.

Venture capital funds, who last year invested record amounts of money, are almost certainly going to be less active in the coming year. The closing of the IPO window has robbed them of exit opportunities, and the US has only seen five IPOs since the start of the year across all sectors. What might give industry watchers hope is that four have been in healthcare.

With so many uncertainties Mr Lloyd-Harris of Abingworth is predicting a much quieter time in the sector, as smaller companies who have raised money hunker down and cut their cash burn. “The mindset among companies now is ‘cash is king and who knows when we will be able to raise money again.’”

However, this might have a knock on effect of increased collaborations within the industry and licensing deals, with heavy R&D development elements.

And while some argue that valuations of some companies are still too high. Cheaper stock prices do mean buying opportunities, either for big pharma, who largely sat out the recent wave of record breaking M&A, or cash-rich larger biotechs.

So the market might expect a wave of M&A, but perhaps not until the expectations of owners fall into line with the reality of their share prices. Traditionally, a pickup in M&A has also heralded an opening in the IPO window; however, if this does not materialise, then the industry could be heading for uncharted waters.

As such, the only winners in 2016 might be large, revenue-producing , cash-rich companies wanting to pick up assets. For everyone else, the defining feature of success might be the amount of cash raised while the sun shone on much of 2015.

#### No impact – biotech fails

Ayoub, 7 (Dr. Ayoub 7 received his B.Sc. in Human Biology from the University of Toronto, and his Doctorate of Medical Dentistry from Nova Southeastern University in Fort Lauderdale "The Biotech Industry: 30 Years of Failure, Starting with Genentech" Jan 9 seekingalpha.com/article/23696-the-biotech-industry-30-years-of-failure-starting-with-genentech)

Biotechnology as a business arguably began with the birth of Genentech (DNA) 30 years ago in 1976. The company had a successful IPO four years later in 1980, which motivated a flurry of other biotech ventures to seek Wall Street’s vast wealth. These companies, which included Genentech, Chiron - now part of Novartis (NVS), Biogen - now Biogen Idec (BIIB), Amgen (AMGN), and Genzyme (GENZ), marked the beginning of a new revolution in medicine. ¶ This first wave of excitement for the biotech industry was full of hope as many argued that traditional pharmaceutical research, relying mostly on chemistry to formulate new drugs, would slowly succumb to the new fields of recombinant technology, molecular cloning, RNA interference, viral vectors, and other cutting edge sciences.¶ Many believed then, and many still do now, that pharmaceutical giants Pfizer (PFE), Johnson & Johnson (JNJ), Eli Lilly (LLY), Bristol-Myers (BMY), and others, could not possibly keep up with the wholly fragmented, albeit, singularly focused research of the many tiny biotech ventures springing up seemingly over night.¶ The evidence however points to the contrary; the **biotech industry has failed** so far.¶ In his new book, Science Business: the Promise, the Reality, and the Future of Biotech, Harvard business professor Gary P. Pisano provides **eye opening proof showcasing how the biotech industry has failed** in its attempt to function as a science-based business.¶ A Losing Industry ¶ Consider the following observation: from the year 1975 through 2004 the biotech industry as a whole has seen an increasing trend in sales, but total operating income before depreciation is essentially **zero**. In fact, if you remove the top ten companies; Amgen, Genentech, Genzyme, Gilead (GILD), Biogen, Biovail (BVF), Cephalon (CEPH), ImClone (IMCL), KOS Pharmaceuticals (KOSP), and Chiron, the rest of the biotech industry has lost more than $6 billion. On average it takes a biotech company 12 years after its IPO before it sees its first profit.¶ Many biotech companies continue the need for additional funding to take drug candidates through the pipeline. In 1990, biotechs made just as much money from secondary offerings as their IPOs. In 2004, secondary offerings provided double the funding that IPOs delivered.¶ This analysis does not even take into account the scores of privately held biotech ventures, which are surely losing more money than publicly traded companies. **The biotech industry is a business in the red**.¶ What about the biotechnology industry’s other promise, to deliver novel and cutting edge research? There was no difference in total productivity between the biotech industry and that of the big pharmaceutical companies over the last couple of decades.¶ While there is an increasing number of new drug candidates, fewer are making it to later stages. In fact, between the years 1998 and 2002, 48 percent of drugs in the pipeline were at the discovery stage. This is telling of the direction this industry is taking. New drug candidates require more initial funding. Little startups are hailing any research study that hints at a new drug candidate to attract new venture spending with less emphasis on quality. ¶ Biotechnology was also believed to bring drugs to the market through cheaper means. In fact, there is no difference in R&D spending per new drug between the two industries. Big pharma’s sales per R&D dollar spent was twice that of the biotech industry back in 1987, but was three times as much in 2004. So not only is big pharma more efficient at producing and selling, but the gap is increasing, not narrowing. There is no evidence that the biotech industry is learning.

### 2NC---AT: Warming !

#### It’s not too late – every incremental reduction reduces exponentially increasing X-risk – prefer IPCC’s global scientific consensus – that’s Aberg – AND…

Bendix et al 21 (Aria Bendix, senior reporter at Insider, covers urban and environmental science, former Assistant Editor at The Atlantic and an in-house journalist at New York University, MFA The New School, BA Harvard University; Aylin Woodward, senior science reporter at Insider, covers climate change and earth science; and Morgan McFall-Johnsen, science reporter at Insider, covering climate and infectious disease, BS Journalism, Northwestern University; **internally citing Youba Sokona, vice-chair of the IPCC**; “Climate scientists want you to know it's not too late,” Business Insider, 8-10-2021, https://www.businessinsider.com/still-time-to-address-climate-change-ipcc-scientists-report-2021-8)

At first glance, Monday's long-awaited report from the Intergovernmental Panel on Climate Change was bleak. It found that some consequences of human-driven emissions are irreversible for centuries to millennia, and that warming will continue to some extent over the next two to three decades, regardless of how much emissions drop.

But the assessment also emphasizes that the worst-case climate disasters aren't inevitable: Every half-degree of warming that can be averted makes a huge difference — including in the intensity and frequency of extreme heat, rainfall, and drought. Even incremental reductions in emissions today would stave off more catastrophic events in the coming decades.

The IPCC report comes from a working group of hundreds of scientists whose last assessment was in 2013. This new report shows that human-caused emissions have led the planet to warm by 1.1 degrees Celsius in the last 170 years. Some glacial melting and sea-level rise will continue for millennia, no matter what happens next.

But Youba Sokona, vice-chair of the IPCC, highlighted a more optimistic takeaway: "We are in the right moment to completely change the direction we are taking," he told Insider.

In the IPCC's worst-case scenario, global emissions would double by 2050, causing temperatures to rise an average of 2.4 degrees Celsius between 2041 and 2060. But in the best-case scenario, the global temperature would rise just 1.5 degrees between now and 2040, then dip back down by the end of the century.

That means there's still time to act.

"It is virtually certain that global surface temperature rise and associated changes can be limited through rapid and substantial reductions in global greenhouse-gas emissions," the IPCC authors wrote.

The world has some time to lower emissions

In the Paris agreement, world leaders pledged to cut greenhouse-gas emissions enough to keep global temperatures from rising more than 1.5 degrees Celsius above pre-industrial levels. Now, Earth's temperature is very likely to blow past that mark in the next 20 years, according to the IPCC report.

But the Paris agreement's larger goal was to avoid a 2-degree rise at all costs. That's still possible, scientists say.

"It's very likely that we'll exceed 1.5 degrees," Greg Flato, a climate scientist from the Canadian Center for Climate Modeling and one of the new report's co-authors, told Insider. "It's possible to exceed slightly and stabilize if we follow a pathway of deep emissions cuts by midcentury."

Already, the world cut carbon emissions by 2.5 billion tons in 2020, since pandemic-related lockdowns meant fewer vehicles on the road, planes in the sky, and less collective electricity use at peak times. That's a roughly 6% decline from the year prior, following decades of rising global emissions.

"The lesson we can learn from that is that we can change our behavior drastically in the short term," Sokona said.

# 1NR

## Error Rates

#### increase prohibitions---altering enforcement discretion is not an increase in prohibitions.

Kusserow ’91 (R.P. Kusserow, Inspector General, Department of Health and Human Services - 42 Code of Federal Regulations - Part 1001, RIN 0991-AA49 – “Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions” - Monday, July 29, 1991 (56 FR 35952) - AGENCY: Office of Inspector General (OIG), HHS. ACTION: Final rule - #E&F - https://oig.hhs.gov/fraud/docs/safeharborregulations/072991.htm)

I. Background

A. The Medicare Anti-Kickback Statute

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

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

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

B. Public Law 100-93

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

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

C. Notice of Intent

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

D. Notice of Proposed Rulemaking

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

II. Summary of the Proposed Rule

A. Business Arrangements Not Exempt

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

B. Need for Continuing Guidance Since there may be a need for the Department to respond to changes in health care delivery or business arrangements more quickly and informally than through the regulatory process to keep the industry abreast of our enforcement policy, the proposed rule invited public comment on how we can best achieve the dual goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments. C. Notice to Beneficiaries While we considered including in several of the proposed safe harbor provisions a requirement that a person notify each Medicare or Medicaid patient he or she refers to a related entity of the financial relationship that exists, we indicated that such notice requirements may be unduly burdensome compared with the potential benefits and, therefore, did not include the requirement in the safe harbors in the proposed regulation. Instead, we invited public comments on this issue. D. Preferred Provider Organizations We cited the increasing variety of arrangements among entities grouped under the generic headings "preferred provider organizations" (PPOs) or "managed care," and that unlike HMOs, there is often no single entity that is recognized as the "health care provider." The proposed regulations did not specifically delineate a safe harbor provision for these arrangements since we believed that one or more of the other proposed safe harbors would often cover relationships in preferred provider and managed care networks. We invited comments from the public, however, on the idea of adding additional safe harbors that would provide further protection to HMOs, PPOs, and other managed care plans. E. Waiver of Coinsurance and Deductible Amounts for Inpatient Hospital Care We noted that with the advent in 1983 of the prospective payment system for paying hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. We solicited comments on defining a safe harbor for waiving coinsurance and deductible amounts that would be limited to inpatient hospital care, be available to all Medicare beneficiaries without regard to diagnosis or length of stay, and assure that any costs to the hospital of waiving the coinsurance and deductible amounts would not be passed on to any Federal program as a bad debt or in any other way. F. Proposed Safe Harbors The regulation published on January 23, 1989, proposing to amend 42 CFR part 1001 by adding a new § 1001.952, set forth "safe harbors" in ten broad areas: 1. Investment Interests To reflect the view that Congress did not intend to bar all investments by physicians in other health care entities to which they refer patients, a safe harbor provision was proposed for investment interests in large public corporations where such investments are available to the general public. This safe harbor described a minimum number of shareholders and a minimum number of assets the company must have in order to qualify under this provision Safe harbors for limited and managing partnerships were considered under the proposed regulation, but were not included. These areas were discussed in the preamble of the proposed rule, and we specifically requested public comments on adopting these practices as safe harbors. 2. Space Rental While many rental arrangements are legitimate, many situations exist where rental payments are simply a device used to mask illegal payments intended to induce referrals. Accordingly, a safe harbor provision was proposed for rental arrangements if: (a) Access to the space is for periodic intervals and such intervals are set in advance in the lease, rather than based on the number of referred patients; (b) the lease is for at least one year so it cannot be readjusted on too frequent a basis to reflect prior referrals; and (c) the charges reflect fair market value. 3. Equipment Rental With the understanding that the payment for the use of diagnostic and other medical equipment may simply be a vehicle to provide reimbursement for referrals, a safe harbor was proposed for certain situations involving equipment rentals similar to those applied to real estate rentals cited above. 4. Personal Services and Management Contracts While health care providers often have arrangements to perform services for each other on a mutually beneficial basis, some of these arrangements may vary the payment with the volume of referrals. The proposed regulation set forth a safe harbor provision for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met that limit the opportunity to provide financial incentives in exchange for referrals. This proposed provision required the services to be paid at fair market value, and was predicated on requirements similar to those set forth in the provisions for space and equipment rental. 5. Sale of Practice Unlike the traditional sale of a practice by a retiring physician, a physician may sell, or appear to sell, a practice to a hospital while continuing to practice on its staff. A safe harbor provision was proposed for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in which he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals. 6. Referral Services Professional societies and other consumer-oriented groups often operate referral services for a fee. Because such a service fee could be construed as a payment in order to obtain a referral, we concluded that it was appropriate to establish a specific safe harbor for this type of practice. In order to safeguard against abuse, however, the provision is only available when several standards are met. 7. Warranties It is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. A safe harbor was proposed for such purposes. 8. Discounts Safe harbors relating to discounts, employees and group purchasing organizations are specifically required by statute. The discount exception was intended to encourage price competition that benefits the Medicare and Medicaid programs. The proposed discount provision was limited in application to reductions in the amount a seller charges for a good or service to the buyer. The discount could take the form of a specified price break, or the inclusion of an extra quantity of the item purchased "at no extra charge." We did not propose to protect many kinds of marketing incentive programs such as cash rebates, free goods or services, redeemable coupons, or credits. 9. Employees The proposed exception for employees permitted an employer to pay an employee in whatever manner he or she chose for having that employee assist in the solicitation of program business and applied only to bona fide employee- employer relationships. 10. Group Purchasing Organizations The proposed group purchasing organization (GPO) exception was designed to apply to payments from vendors to entities authorized to act as a GPO for individuals or entities who are furnishing Medicare or Medicaid services. The proposed exception required a written agreement between the GPO and the individual or entity that specifies the amounts vendors will pay the GPO. III. Response to Comments and Summary of Revisions As indicated above, in response to the proposed rulemaking we received 754 public comments from various provider groups, medical facilities, professional and business organizations and associations, medical societies, State and local government entities, private (35954) practitioners and concerned citizens. The comments included both general and broadreaching concerns regarding the impact of this regulation, and specific comments on those areas and safe harbor provisions about which we requested public input. A summary of the comments received and our responses to those comments follows. A. General Comments Comment: A large number of commenters expressed concern about the implication of engaging in a business arrangement that does not comply fully with a provision of this regulation. Some of these commenters expressed the view that the safe harbor provisions are narrowly drawn and leave many lawful business arrangements unprotected. Moreover, the preamble to the proposed rule warns: "[W]here individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to comply fully with one of the exemptions in these regulations, they would risk scrutiny by the OIG \* \* \*." These commenters urged the OIG to make clear that the failure to comply fully with a safe harbor provision is not per se illegal, and does not mean that prosecution will automatically follow. In addition, they requested safe harbor protection for business arrangements where there has only been a "technical violation" of the statute, where there has been "substantial compliance" with this regulation, or where the remuneration in question is "de minimis." Response: This regulation covers many categories of business arrangements, providing standards to be met within each safe harbor provision. If a person participates in an arrangement that fully complies with a given provision, he or she will be assured of not being prosecuted criminally or civilly for the arrangement that is the subject of that provision.

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

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

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

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

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

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

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

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

#### prohibitions must forbid by law.

Brunetti ‘8

Petition before SCOTUS - Kenneth A. Brunetti - Counsel of Record, Miller & Van Eaton, PLLC - BRIEF FOR THE RESPONDENT IN OPPOSITION, On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, IN THE SUPREME COURT OF THEUNITED STATES – Filed on December 19th, 2008 - #E&F – continues to footnote - https://www.scotusblog.com/wp-content/uploads/2009/01/08-626\_bio.pdf

The FCC has consistently required evidence that a provision, as applied, has prohibitory effects, and rejected challenges based on the mere possibility that authority might be exercised in a manner that arguably "prohibits or has the effect of prohibiting" the ability of a provider to offer services. Cal. Pay phone, 12 F.C.C.R. at 14209 \ 38 (emphasis added). The FCC accordingly rejected a Section 253 petition because the complainant had failed to show that the challenged regulation made it "impractical and uneconomic" or eliminated any "commercially viable opportunity" to enter the market. 12 F.C.C.R. at 14210 If 41.12 As the FCC's cases demonstrate, this reading of Section 253 provides ample protection against requirements that actually prohibit or "have the effect of prohibiting" market entry - it does not, as Level 3 claims, limit Section 253(a) to protecting against "far-fetched and entirely imaginary5' ordinances.13 As discussed, infra, the FCC test has been adopted in the First, Second, Eighth, Ninth, and Tenth Circuits.

12 This applies the primary and ordinary meaning of the term "prohibit," which is to "forbid by law," and not merely "impede," as Level 3 would have it. Black's Law Dictionary, 8th Ed. 2004.

## Overview

### 2NC – Climate ! O/V

#### Prefer scientific consensus – now’s the last chance before countless catastrophic impacts become irreversible – encompasses all other impacts, making it try or die to avoid the disad

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

01

Introduction

COP26 is the most important climate summit since COP21 in Paris in 2015. Over the past year, the global politics of climate change have shifted, with the election of President Joe Biden and the announcement of China’s carbon neutrality target.

Addressing climate change is the defining challenge of our time. Around the globe – and across the suite of UN organizations – there is widespread recognition of the urgency to reduce greenhouse gas (GHG) emissions and to prepare for a world that is, and will continue to be, severely impacted by climate change.

The foundational treaty of the international climate change regime – the United Nations Framework Convention on Climate Change (UNFCCC) – was adopted at the Rio Earth Summit in 1992.1 Its signatories agreed to ‘achieve… stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’.2 The states that have ratified the UNFCCC meet annually at the ‘Conference of the Parties’ (COP) to assess and review the implementation of the convention.3 The COP has negotiated two separate treaties since the formation of the UNFCCC: the Kyoto Protocol in 1997, and the Paris Agreement in 2015.4

The Paris Agreement was adopted by 196 parties at COP21 in 2015 and entered into force less than a year later.5 The goals of the treaty are to keep the rise in the global average temperature to ‘well below 2°C above pre-industrial levels’, ideally 1.5°C; enhance the ability to adapt to climate change and build resilience; and make ‘finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development’.6 The agreement adopts a ‘bottom-up’ and non-standardized approach, where parties themselves set their national emission reduction targets and communicate these to the UNFCCC in the form of nationally determined contributions (NDCs).7

As things stand, the targets8 that were submitted in the run-up to COP21 are not sufficient, even if fully implemented, to limit global warming to 2°C, much less 1.5°C.9 The Paris Agreement was designed, however, to generate increased ambition over time via two components: a collective ‘global stocktake’ during which progress towards Paris Agreement goals is assessed based on country reporting,10 and the ‘ratchet mechanism’, which encourages countries to communicate new or updated NDCs every five years, with the expectation that ambition will increase over time.11 The results of the stocktake are scheduled to be released two years before NDC revisions are made.12 This sequencing is designed to allow national plans to account for the global context of the climate assessment. The first global stocktake is to be conducted between 2021 and 2023, and will be repeated every five years thereafter.13 The results of the first stocktake are due to be published around COP28.

We really are out of time. We must act now to prevent further irreversible damage. COP26 this November must mark that turning point.14 UN Secretary-General António Guterres, 16 September 2021

The 26th Session of the Conference of the Parties (COP26) to the UNFCCC is to be hosted by the UK, in partnership with Italy. After a year-long delay, the conference is now scheduled to take place in Glasgow, Scotland, between 31 October and 12 November 2021.15 Organizing an in-person event during a pandemic presents a substantial challenge. The UK government is providing vaccines to accredited delegations, but doses only started to be delivered at the beginning of September 2021 and restrictions, such as quarantine requirements,16 pose further obstacles to participation.17 An alliance of 1,500 civil society organizations are among those calling for a second postponement of the COP, citing concerns about a lack of plans to enable safe and inclusive participation of delegates from, not least, the Global South.18 The UK government is, however, adamant that it will proceed with the conference as planned.19

The pandemic has changed understandings of global risks, the interconnected nature of economies and the role of governments in preparing for and responding to existential threats. This may provide impetus for accelerated climate action. The postponement of COP26 itself has been of considerable significance. Over the past year, the global politics of climate change have shifted, with the election of President Joe Biden and the announcement of China’s climate neutrality target being particularly important. Moreover, the economic recovery packages that are being rolled out to counter the economic consequences of the pandemic present an opportunity to accelerate the green transition.20 To date, however, the members of the G20 have prioritized investments in fossil fuels above those in clean energy,21 and only 10 per cent of the global expenditure is estimated to have been allocated to projects with a net positive effect on the environment.22

COP26 is the most important climate summit since COP21 in Paris, and it differs from earlier COPs in several ways: it is the first test of the ambition-raising ratchet mechanism and marks a shift from negotiation to implementation. An ambitious outcome at COP26 requires substantial action to be taken before the summit – and outside the remits of the UNFCCC process – as well as at the actual conference.

Human activity has already caused the global average temperature to rise by around 1.1°C above pre-industrial levels, and every additional increase in warming raises the risks for people, communities and ecosystems. To avoid the most catastrophic climate change impacts, it is essential world leaders make every effort to limit warming to 1.5°C. Working group I of the Sixth Assessment Report of the IPCC shows it is still possible to keep warming to this critical threshold, but that unprecedented action must be taken now.23 As John Kerry, special presidential envoy for climate, stated, ‘[t]his test is now as acute and as existential as any previous one’.24

COP26 has a critical role in getting the world on track for a 1.5°C pathway, and in supporting those most affected by climate change impacts. It also constitutes a key test for the credibility of the Paris Agreement and the UNFCCC process overall. But what can and should the Glasgow summit achieve more specifically? The objective of this paper is to discuss what a positive outcome at COP26 would entail, with the dual aims of encouraging increased ambition and contributing to an informed public debate. The main argument put forth is that substantial progress must be made in three main areas, namely on increasing the ambition of NDCs; enhancing support to and addressing concerns of climate-vulnerable developing countries; and advancing the Paris Rulebook to help operationalize the Paris Agreement.

COP26 is undoubtedly hugely significant and national government pledges in the run-up to Glasgow will contribute to shaping the level of future GHG emissions. However, the event is not only critical in terms of reaching an ambitious outcome on climate, it is also an important opportunity to judge the level of confidence in the international process and the UNFCCC.

02

Increasing the ambition of the NDCs

A key element of COP26 will be the level of ambition of the revised NDCs put forward by governments to the UNFCCC and the extent to which these keep the 1.5°C global warming target agreed in Paris within reach.

According to the United Nations Environment Programme (UNEP), greenhouse gases (GHGs) in 2019 totalled 52.4 gigatonnes of CO₂ equivalent (GtCO₂e)25 of which the majority was CO₂ (38 Gt), then methane (9.8 Gt), nitrous oxide (2.8 Gt) and F-gases (1.7 Gt).26 The same year, GHG emissions were approximately 59 per cent higher than in 1990 and 44 per cent higher than in 2000.The six largest emitters – together accounting for 62 per cent of the global total – were China (26.7 per cent), the US (13 per cent), the EU (8 per cent), India (7 per cent), Russia (5 per cent) and Japan (3 per cent) (see Figure 1).27

**[FIGURE 1 OMITTED]**

According to UNEP, the implementation of the first round of NDCs would result in an average global temperature increase of 3°C above pre-industrial levels by the end of the century, with further warming taking place thereafter. If these NDC’s were fully implemented, emission levels are expected to be in the range of 56 GtCO2e (with unconditional NDCs) to 53 GtCO₂e (with conditional NDCs) by 2030.28 To align with a 2°C pathway, the ambition of the second round of NDCs would need to triple relative to the original targets, leading to emissions levels of around 41 GtCO₂e in 2030. Alignment with the 1.5°C target would require a fivefold increase in ambition, leading to emission levels around 25 CO₂e in 2030 (see Figure 2).29

**[FIGURE 2 OMITTED]**

The Paris Agreement states that parties shall communicate an NDC every five years,30 and that each submission shall constitute a progression in terms of ambition.31 Parties conveyed their first round of targets prior to COP21, and were due to submit new or updated plans in 2020.32 COP26, originally scheduled for November 2020, would then take stock of the collective level of ambition of these plans vis-à-vis the temperature targets of the Paris Agreement. The postponement of the COP by one year has in practice (albeit not formally) extended the deadline for submitting NDCs to ‘ahead of COP26’.

Where do we stand?

The delay of COP26 has given countries more time to put forward NDCs and longer-term decarbonization targets. This effort gained significant traction when China pledged to achieve carbon neutrality by 2060 and peak its emissions before 2030, during the general debate of the 75th Session of the UN General Assembly (UNGA) in September 2020.33 Then, in November 2020, the UK submitted its NDC, pledging a 68 per cent reduction in emissions by 2030 (based on 1990 levels)34 and later added a 2035 target of 78 per cent.35 The EU has, moreover, put forward a 55 per cent reduction target relative to 1990 levels,36 with some countries within the bloc going even further, including Germany, which agreed on a 65 per cent reduction target.37

The election of President Biden has fundamentally changed the US’s position on climate change, leading to, among other things, the country re-joining the Paris Agreement.38 At a specially convened Leaders Summit on Climate – hosted by the US – the Biden administration presented an NDC with an emission reduction target of 50–52 per cent39 (based on 2005 levels, which is equivalent to 40–43 per cent below 1990 levels40). During the summit, countries including Canada, Japan and others pledged more ambitious NDC targets.41

While there is more pressure on governments to act on climate change, due to its increasingly devastating impacts, there are also more opportunities for carbon mitigation through available alternative technologies and systems, as well as falling renewable energy costs (see Box 2).

Table 1 details the NDC targets put forward by G20 countries prior to COP21 in Paris and the extent to which these have since been revised. The updated NDCs have been assessed by the independent body, Climate Action Tracker, which has analysed to what extent the NDCs align with the 1.5°C pathway. The analysis also looks at domestic policies and actions, which are important as they provide an indication of whether governments are following through on their promises.

**[TABLE 1 OMITTED]**

As of September 2021, 85 countries and the EU27 had submitted new or updated NDCs, covering around half of global GHG emissions. Some parties, like China and Japan, have proposed new targets but not yet submitted them formally while around 70 parties – including G20 countries like India, Saudi Arabia and Turkey – have neither proposed nor communicated a revised NDC target. Several parties have, moreover, submitted new NDCs without increasing ambition. These include Australia, Brazil, Indonesia, Mexico, New Zealand, Russia, Singapore, Switzerland and Vietnam.42 In some of these cases, adjustments in baselines mean that ambition has de facto decreased (Brazil and Mexico).43 Analysis published by Climate Action Tracker in September 2021 shows that the NDC updates only narrow the gap to 1.5°C by, at best, 15 per cent (4 GtCO₂e). This leaves a large gap of 20–23 GtCO₂e.44

Similar analysis from the UN underscores the need for further NDC enhancements.45 If all current NDCs are implemented, total GHG emissions (not including emissions associated with land use) in 2030 are projected to be 16.3 per cent higher than in 2010, and 5 per cent higher than in 2019. The emissions of the parties that have submitted new or updated NDCs are, however, expected to fall by around 12 per cent by the end of the decade, compared to 2010 levels. The UN report also highlights the importance of providing support to developing countries, as many of these have submitted NDCs that are – at least in part – conditional on the receipt of additional financial resources, capacity-building support, and technology transfer, among other things. If such support is forthcoming, global emissions could peak before 2030, with emission levels at the end of this decade being 1.4 per cent lower than in 2019. However, even the full implementation of both the unconditional and conditional elements of the NDCs would lead to an overshoot of the targets of the Paris Agreement – as alignment with 1.5°C and 2°C require cuts of 45 per cent and 25 per cent, respectively, by 2030 (relative to 2010 levels).46

A large number of countries are also making more long-term net zero emissions or carbon neutrality pledges. As of September 2021, just over 130 countries had made such commitments, but not all of them have formally presented them to the UNFCCC.47 Examples include large economies like China, Japan, Brazil, the US, South Africa, South Korea, and the EU, as well as climate-vulnerable developing countries like the Marshall Islands, Barbados, Kiribati and Bangladesh.48 Climate Action Tracker estimates that if these long-term targets – and the NDCs – are fully implemented, global warming could be limited to 2°C.49 Most of the net zero pledges are, however, formulated in vague terms that are not consistent with good practice. The long-term targets are, moreover, only credible if they are backed up by ambitious and robust 2030 NDCs,50 given that substantial cuts in emissions must occur this decade. An additional concern that has been raised when it comes to net zero pledges is that they may encourage reliance on negative emissions technologies, such as bioenergy with carbon capture and storage (BECCS), which have still to be tested at scale to assess land requirement, efficiency and economic viability.51

**[BOX 1 OMITTED]**

The challenge of closing the gap

Bridging the gap between current NDCs and targets that would keep warming to 1.5°C is a defining challenge for governments ahead of COP26. As mentioned, UNEP estimates that the ambition of 2030 targets would need to be enhanced fivefold vis-à-vis pledges made in 2015 to align with a 1.5°C pathway.53 Several large emitters – including the US and the EU – have now submitted their new or updated NDCs. According to Climate Action Tracker, the UK’s target is considered to be compatible with a 1.5°C pathway, while those of the US, EU, Japan and Canada are classified as ‘almost sufficient’.54

It is critical that all countries that have not yet submitted a new or updated NDC do so, and that these pledges are aligned with 1.5°C. It is equally important that countries that have submitted unambitious NDCs revisit their targets. The Paris Agreement states that parties may revise existing NDCs at any time, if the purpose is to enhance ambition.55 The G20 countries have a particularly important role to play. In July 2021, the Italian G20 presidency hosted the first ever G20 Climate and Energy Ministerial meeting. In the final communique the countries in the G20 stated that they ‘intend to update or communicate ambitious NDCs by COP26’.56 The importance of action from all members of the G20 is clear, as they collectively account for 80 per cent of global emissions and as UN Secretary-General António Guterres said, ‘there is no pathway to this [1.5°C] goal without the leadership of the G20’.57

With only a few weeks to go it is, however, unlikely that the 20–23 GtCO₂e gap in targets will be closed by COP26. At the UK-hosted COP26 ministerial in July, a number of ministers stressed that parties would need to respond to any gap remaining by the Glasgow conference. Some suggested that such a response could include a ‘clear political commitment’ to keep 1.5°C within reach, a recognition of the gap, and a plan to bridge it. More specific proposals of actions that could be taken, as part of the response, to keep the 1.5°C pathway alive were also discussed. Suggestions included, but were not limited to, encouraging countries whose NDCs are not consistent with 1.5°C to bring their 2030 targets in line before 2025 (when the third round of NDCs are due); calling for parties to submit concrete long-term strategies for reaching net zero; and/or sending clear signals to markets through actions like phasing out unabated coal, carbon pricing, fossil fuel subsidy reform, nature-based solutions, and decarbonizing transport.58

Achieving a positive COP26 outcome

The ultimate benchmark for a high ambition outcome at COP26 is whether the new or updated NDCs are ambitious enough to align with a 1.5°C pathway. For many communities and ecosystems, the threat of different climate impacts between 1.5°C and 2°C – not to mention 3°C, 4°C or 5°C – is existential. Each increment of warming is anticipated to drive increasingly devastating and costly impacts, including extreme heatwaves, rising sea levels, biodiversity loss, reductions in crop yields, and widespread ecosystems damage including to coral reefs and fisheries.59

Keeping the goal of 1.5°C within reach will require substantial action this decade. Long-term targets to achieve net zero emissions or carbon neutrality have the potential to be powerful drivers of decarbonization but need to be supported by ambitious NDCs as well as concrete policies and sufficient investment.

Should we reach COP26 without sufficient ambition on NDCs, parties would need to present a plan for how ambition will be raised in the early 2020s. This could include a COP decision or a political statement underscoring the need to keep warming to 1.5°C and inviting parties to revisit their NDCs earlier than the Paris timetable dictates (for instance in 2023 instead of 2025).60 To support more ambitious action, countries should look to expand international collaboration and accelerate decarbonization in key sectors. At COP26, parties can help boost the credibility of their pledges by showcasing policies, measures and sector initiatives that will accelerate decarbonization, including on the phase out of unabated coal and the increased use of electric vehicles (see Box 3).

**[BOX 2 OMITTED]**

**[FIGURE 3 OMITTED]**

In the run-up to COP26, the UK government is mobilizing its counterparts and non-state actors to drive accelerated action on phasing out the use of unabated coal,65 accelerating the deployment of electric vehicles,66 protecting and restoring nature (nature-based solutions67), and aligning financial flows with the goals of the Paris Agreement.68 The role of the private sector is crucial in the transition to net zero economies and is recognized within the framework of the UNFCCC, as they can deliver funding, innovation and technology deployment at a pace and scale beyond that of most governments (see Box 1). It is hoped that some of these initiatives will lead to plurilateral agreements at or ahead of COP26, which could enhance the credibility of mitigation pledges and help keep the 1.5°C target within reach. Being able to showcase a package consisting of ambitious NDCs, plurilateral deals, and national policies at COP26 could generate positive momentum and create a sense of inevitability around the transition to net zero societies.

**[BOX 3 OMITTED]**

03

Support to climate-vulnerable developing countries

Increased action on climate finance, adaptation, and loss and damage is critical for supporting climate-vulnerable developing countries, strengthening trust and raising ambition on mitigation.

The year 2020 was one of the warmest on record.80 As COVID-19 ravaged the world, extreme weather events continued to cause severe devastation. In Bangladesh, torrential rains submerged a quarter of the country,81 resulting in hundreds of deaths, mass displacement and damage to more than a million homes.82 Record-breaking floods in Sudan83 and Uganda84 also displaced hundreds of thousands, while super cyclone Amphan raged across South Asia.85 Extreme weather events were also a defining feature of the summer of 2021.

An unprecedented heatwave may have killed almost 500 people in British Columbia,86 as well as a billion marine animals along the Canadian coastline.87 In the Chinese province of Henan people drowned in the subway after a year’s worth of rain fell in just three days.88 Germany and Belgium also experienced death and destruction as a result of severe flooding,89 while villages in Greece burned.90

The impacts of climate change are striking even harder than many anticipated,91 and as temperatures continue to rise extreme weather events are increasing in both frequency and intensity. Limiting global warming to 1.5°C is key to avoiding the most catastrophic events, but substantial measures must also be undertaken to adapt to climate change impacts and build resilience. As the summer of 2021 shows, no country is spared. It is, however, those who have emitted the least that are most at risk,92 and in many countries that are disproportionately affected by climate change – such as the least developed countries (LDCs)93 – financial constraints impede their ability to invest in adaptation, build resilience and deal with loss and damage.94 COVID-19 has aggravated this challenge: while industrialized countries have implemented unprecedented stimulus measures to support their economies – and vaccinated large parts of their populations – many developing countries remain in the midst of a health and economic catastrophe.

Scaled up action on climate finance, adaptation and loss and damage are – in addition to increased ambition on mitigation – key priorities for climate-vulnerable nations ahead of COP26. Raised ambition and concrete delivery in these areas are critical for supporting those at the frontline of climate change, key to building trust, and could encourage some parties to raise the ambition of their NDC pledges. The implementation of many NDCs is, in addition, at least partly conditional upon receiving increased levels of finance, as well as other types of support.95

Honouring the $100 billion goal

In 2009, developed countries committed to mobilizing $100 billion per year by 2020 for climate mitigation and adaptation in developing countries.96 This pledge was subsequently formalized in the Cancun Agreements in 201097 and reaffirmed in the Paris Agreement in 2015. The resources provided were to be ‘new and additional’98 and come from a variety of public and private sources.99 The $100 billion goal is a core element of the bargain underpinning the Paris Agreement.100 While achieving the mitigation and adaptation goals of the agreement will require trillions of dollars in investment – of which most will need to come from the private sector – the delivery of the $100 billion is critical to building trust between developed and developing countries,101 and is important for raising ambition on mitigation.102

The OECD estimates that $79.6 billion was mobilized in 2019, which is the most recent year for which official figures are available.103 In 2018, the figure was $78.9 billion, and in 2017 it was $71.2 billion.104 Though the verified figures for 2020 will not be available until 2022, it is clear the target was missed.105

Developed countries have, moreover, not yet been able to show that the pledge will be honoured in 2021, nor demonstrate conclusively how it will be met in the 2022–24 period.106

The pledge by developed nations to mobilize $100 billion to developing nations by 2020 is a commitment made in the UNFCCC process more than a decade ago. It’s time to deliver. How can we expect nations to make more ambitious climate commitments for tomorrow if today’s have not yet been met?107

Patricia Espinosa, 23 July 2021

How the goal is achieved matters. Only around one-fifth of bilateral climate finance is allocated to the LDCs,108 and locally led projects receive low priority.109 There are also concerns related to overreporting and lack of additionality. Oxfam estimates, for instance, that 80 per cent of public climate finance provided over the 2017–18 period took the form of loans or other non-grant instruments, and that the actual grant equivalent only accounted for around half of the total amount of finance reported.110 Furthermore, the Center for Global Development has found that almost half of the climate finance reported between 2009 and 2019 cannot be considered ‘new and additional’.111 There is, finally, an urgent need to close the adaptation finance gap (see next section),112 and facilitate access to finance.113

It is widely recognized that honouring the $100 billion goal is a prerequisite for success at COP26.114 The hitherto failure of developed countries to provide clarity on the issue is creating mistrust between countries,115 with the director of the International Centre for Climate Change and Development (who is also an adviser to the climate-vulnerable countries) conveying that, ‘if the money is not delivered before November, then there is little point in climate-vulnerable nations showing up in Glasgow to do business with governments that break their promises’.116 The chair of the LDC Group has also made it clear that, ‘[t]here will be no COP26 deal without a finance deal’. 117

The G7 countries play a critical role in mobilizing the $100 billion,118 and there was a hope that G7 leaders would increase their bilateral commitments substantially – and provide clarity on the $100 billion119 – when they convened in Cornwall in June 2021. Some new pledges were made. Canada, for instance, committed to doubling its climate finance through to 2025 (to CAD $5.3 billion), and Germany pledged to increase its annual commitments from €4 billion to €6 billion by 2025 at the latest.120 The G7 members collectively also committed to ‘each increase and improve’ their public climate finance contributions, and announced they would develop a new international initiative – ‘Build Back Better for the World’121 – the details of which have yet to be fleshed out. However, many developing country officials – and many observers worldwide – expressed disappointment with the summit outcome, with the climate minister of Pakistan describing the G7 commitments as ‘peanuts’.122

Several announcements on climate finance were also made during the 76th Session of the UNGA in September 2021. Most importantly, President Joe Biden pledged to double US climate finance (again) from the previously committed $5.7 billion to $11.4 billion per year by 2024. Actual delivery is, however, contingent on congressional approval.123 The EU – which already contributes around $25 billion in climate finance per year – also stepped up, announcing an additional €4 billion until 2027,124 while Italian Prime Minister Mario Draghi conveyed that Italy would shortly be announcing a new climate finance commitment.125 Though the US pledge in particular has been described as a critical step forward that ‘puts the $100 billion within reach’,126 more will need to be done.127

$100 billion is a bare minimum. But the agreement has not been kept. A clear plan to fulfil this pledge is not just about the economics of climate change; it is about establishing trust in the multilateral system.128

António Guterres, 9 July 2021

#### AND, expectations of resource conflict alone makes nuclear war inevitable in the short term

Dr. Michael T. Klare 20, Five Colleges Professor of Peace and World Security Studies at Hampshire College, Ph.D. from the Graduate School of the Union Institute, BA and MA from Columbia University, Member of the Board of Director at the Arms Control Association, Defense Correspondent for The Nation, “How Rising Temperatures Increase the Likelihood of Nuclear War”, The Nation, 1/13/2020, https://www.thenation.com/article/archive/nuclear-defense-climate-change/

Climbing world temperatures and rising sea levels will diminish the supply of food and water in many resource-deprived areas, increasing the risk of widespread starvation, social unrest, and human flight. Global corn production, for example, is projected to fall by as much as 14 percent in a 2°C warmer world, according to research cited in a 2018 special report by the UN’s Intergovernmental Panel on Climate Change (IPCC). Food scarcity and crop failures risk pushing hundreds of millions of people into overcrowded cities, where the likelihood of pandemics, ethnic strife, and severe storm damage is bound to increase. All of this will impose an immense burden on human institutions. Some states may collapse or break up into a collection of warring chiefdoms—all fighting over sources of water and other vital resources.

A similar momentum is now evident in the emerging nuclear arms race, with all three major powers—China, Russia, and the United States—rushing to deploy a host of new munitions. This dangerous process commenced a decade ago, when Russian and Chinese leaders sought improvements to their nuclear arsenals and President Barack Obama, in order to secure Senate approval of the New Strategic Arms Reduction Treaty of 2010, agreed to initial funding for the modernization of all three legs of America’s strategic triad, which encompasses submarines, intercontinental ballistic missiles, and bombers. (New START, which mandated significant reductions in US and Russian arsenals, will expire in February 2021 unless renewed by the two countries.) Although Obama initiated the modernization of the nuclear triad, the Trump administration has sought funds to proceed with their full-scale production, at an estimated initial installment of $500 billion over 10 years.

Even during the initial modernization program of the Obama era, Russian and Chinese leaders were sufficiently alarmed to hasten their own nuclear acquisitions. Both countries were already in the process of modernizing their stockpiles—Russia to replace Cold War–era systems that had become unreliable, China to provide its relatively small arsenal with enhanced capabilities. Trump’s decision to acquire a whole new suite of ICBMs, nuclear-armed submarines, and bombers has added momentum to these efforts. And with all three major powers upgrading their arsenals, the other nuclear-weapon states—led by India, Pakistan, and North Korea—have been expanding their stockpiles as well. Moreover, with Trump’s recent decision to abandon the Intermediate-Range Nuclear Forces (INF) Treaty, all major powers are developing missile delivery systems for a regional nuclear war such as might erupt in Europe, South Asia, or the western Pacific.

## Thumpers

### AT: Thumper – T/L

#### AND, he won’t spend PC on anything else if tension between them emerges – only plan’s fiat disrupts his careful prioritization

Pramuk and Franck 12-30 (Jacob Pramuk, staff reporter at CNBC, BA newspaper and online journalism, political science, Syracuse University; and Thomas Franck, economic policy reporter at CNBC, formerly led The Harvard Crimson’s media department, AB economics, Harvard University; “Democrats look to salvage tattered legislative agenda as they face 2022 midterm elections,” CNBC, 12-30-2021, <https://www.cnbc.com/2021/12/30/congress-news-democrats-to-take-up-build-back-better-fed-picks-in-2022.html>)

KEY POINTS

Congress returns in 2022 with a long to-do list before November’s midterm elections.

The top priority for Democrats is President Joe Biden’s Build Back Better Act, which stalled out in the Senate this month.

Government funding, Federal Reserve nominations, a research and development bill, and voting rights legislation are also among Congress’ priorities.

Congressional Democrats will return next year and try to check a few long-floundering items off their to-do list before the 2022 midterms consume Washington.

The next few months in the Capitol could shape the economic health of U.S. households for years to come. The scope of Democrats’ accomplishments could also play a role in whether they hold control of one or both chambers of Congress for the second half of President Joe Biden’s first term.

Biden’s Build Back Better Act weighs the most heavily on Democratic minds. The $1.75 trillion investment in social and climate programs hit a wall this month when Sen. Joe Manchin, D-W.Va., said he would oppose it.

“It would be really, really sad as someone who worked really hard on this, if we were not successful,” Senate Budget Committee Chairman Bernie Sanders, I-Vt., told MSNBC after Manchin announced his stance this month. “But it would be even sadder if the American people said, ‘these people stand for nothing. Not only can’t they get anything done, they don’t believe in anything.’”

Though Senate Majority Leader Chuck Schumer has vowed to bring the bill up for a vote next month, it is all but doomed. Even so, Democrats hope to revive it in some form that could win support from every member of their Senate caucus.

The congressional tasks that hold wide-ranging economic implications do not end with Build Back Better. The Senate will hold votes on whether to confirm Federal Reserve Chair Jerome Powell and Governor Lael Brainard – Biden’s choice for vice chair – to lead the central bank as it tries to tackle an economic recovery and the highest inflation in decades.

Congress will have to pass a government funding bill by mid-February to prevent a government shutdown that could lead to furloughs of federal workers. In addition, the Senate and House will work to resolve disagreements on a bill that would pile a quarter of a trillion dollars into research and development to catch up with Chinese investments in technology.

Democrats’ legislative agenda also includes a bill that some in the party believe is the biggest priority of all: The party will try to pass voting rights legislation to counter restrictive bills introduced by state legislatures around the country. Elections proposals stalled repeatedly last year as all Republicans opposed them and at least two Democrats resisted efforts to bypass the filibuster.

Build Back Better

Democrats see the social spending and climate plan as their top domestic priority and a key to showing voters what they can accomplish before November. Manchin’s stance has stopped the bill in its tracks, and it has no clear path forward.

The Senate will return to Washington next week, followed by the House a week later.

Schumer aims to bring a version of the House-passed plan to the Senate floor this month. As Democrats look to approve the bill with a simple majority in the face of unified GOP opposition, a no vote from Manchin alone would sink it.

“We are going to vote on a revised version of the House-passed Build Back Better Act – and we will keep voting on it until we get something done,” Schumer wrote to Senate Democrats earlier this month.

Democrats will likely have to lop off pieces of the bill to win Manchin’s support. They could face hard choices in the coming weeks about whether to scrap some policy priorities to ensure others pass.

The House-passed bill includes a one-year extension of the enhanced child tax credit, child-care subsidies, four weeks of paid leave, an expansion of Medicare to cover hearing aids and more than $500 billion in green energy programs, among a slew of other measures. The strengthened child tax credit — which expires at the end of the year — and paid leave could fall first as Democrats try to appease Manchin.

The conservative West Virginia Democrat, who has a personal financial interest in the coal industry, pushed Democrats to cut a major climate program from the bill as they trimmed its price tag to $1.75 trillion from $3.5 trillion. The White House’s talks with Manchin and Sen. Kyrsten Sinema, D-Ariz., led to a framework agreement in the fall.

But Manchin never endorsed it. He expressed concerns that the bill would further fuel inflation. He also criticized his party for using revenue generated over a decade to fund programs that, in some cases, would expire after a few years or less.

Earlier this month, Manchin joined Senate Democrats on a conference call to discuss how to move forward with Build Back Better. On the call, Schumer said the party would keep trying to pass the legislation, according to NBC News.

“I know we are all frustrated at this outcome,” he said. “However, we are not giving up on BBB. Period. We won’t stop working on it until we pass a bill.”

### AT: Thumper – China (USICA)

#### China does NOT thump – not spending PC

Pramuk and Franck 12-30 (Jacob Pramuk, staff reporter at CNBC, BA newspaper and online journalism, political science, Syracuse University; and Thomas Franck, economic policy reporter at CNBC, formerly led The Harvard Crimson’s media department, AB economics, Harvard University; “Democrats look to salvage tattered legislative agenda as they face 2022 midterm elections,” CNBC, 12-30-2021, https://www.cnbc.com/2021/12/30/congress-news-democrats-to-take-up-build-back-better-fed-picks-in-2022.html)

The U.S. Innovation and Competition Act would invest billions into emerging technologies, critical supply chains and semiconductors in what would amount to one of the most significant government interventions in industrial production in decades.

While Biden said at the time that he looked forward to signing the bipartisan legislation, the bill has since been stuck in the House thanks to disagreements between the chambers.

House Democrats have taken a piecemeal approach to the bill and advanced its various components in different committees in part to water down portions of the Senate legislation. The slower approach has frustrated Senate Democrats and Republicans, who say that the bill is a national security priority and that investments in the nation’s critical technologies should begin as soon as possible.

Dewardric McNeal, a managing director at government affairs-focused Longview Global, told CNBC that disagreements between lawmakers have largely driven the delays. But Congress may also be waiting for a stronger signal from the White House, which McNeal said has been vague on how it plans to deal with Beijing.

“The Administration has been very active and hands on with the major domestic legislation but has remained on the sideline of the China legislative process,” he wrote. “Very few staffers on the Hill know what the Administration wants with respect to China policy and this has also contributed to delays.”

Schumer, a longtime China hawk in the Democratic Party and champion of the current legislation, tried to attach the competition bill to the latest National Defense Authorization Act before meeting GOP resistance and abandoning the effort.

Still, Democrats are expected to make the China bill a chief priority in 2022. If House Speaker Nancy Pelosi, D-Calif., is unable to persuade her caucus members to pass the existing legislation, the Senate could opt to approve components of the bill one by one.

## Won’t Pass

### AT: Won’t Pass – T/L

#### A new compromise is likely – BUT sustaining focus and PC this week is key

Brachfeld 12-29 (Ben Brachfeld, reporter at Brooklyn Paper, former reporter for the New York Post, BA political science and economics, New York University; **internally quoting U.S. Rep. Jamaal Bowman (D-NY)**; “‘We Need Historic Leadership from Biden and Schumer’: Jamaal Bowman on ‘Build Back Better’ Negotiations, Mayor-elect Adams, & More,” Gotham Gazette, 12-29-2021, <https://www.gothamgazette.com/state/10996-jamaal-bowman-build-back-better-congress-education>)

Bowman has been highly critical of Manchin, who represents West Virginia, a heavily red state, for blocking Build Back Better for what he describes as underhanded reasons, at the behest of his donors and against the interests of his constituents.

“People just want things to get done for them, for their families, for their children, for their community. And what Manchin is doing right now is he is stopping progress,” Bowman told Gotham Gazette editor Ben Max in the podcast interview, just a few days after Manchin had announced on Fox News that he was not in favor of moving ahead on Build Back Better. “He is stopping the progress of his own party. He is stopping the progress of those who are most vulnerable in our district and in our country. And…he seems to be more responsive to donors and dark money and special interests than he is to the people of West Virginia.”

Manchin has reportedly offered a counterproposal to the Biden administration, which includes the White House’s goal of universal pre-K and, crucially, hundreds of millions of dollars in money to address climate change. But it eliminates the child tax credit (Manchin reportedly believes, despite no evidence, that families spend money from the tax credit on drugs), a crucial lifeline for many families living in poverty, and which Bowman believes is not something he and other progressive Democrats should be forced to compromise on.

“I'm very frustrated that progressives are consistently the ones who are asked to compromise,” Bowman said. “I don't want to compromise on anything, just to be clear. But where we are now, there's going to be some compromise. I hate -- and I never use the word hate for anything -- but I hate that we are compromising on childhood poverty.”

Bowman highlighted the climate investments, but also noted that Build Back Better includes a massive influx of funding for public housing, including NYCHA, as well as childcare, pre-K, violence reduction, workforce development, capping insulin costs, paying home-care workers livable wages, and more. "The largest so-called social investment in U.S. history but one that is equitable...is the game-changer that we need right now,” he said.

While Bowman sounded somewhat cautiously optimistic that some compromise agreement can be reached in 2022, he believes that Biden used most of his political capital getting the $1 trillion infrastructure bill, and is worried that the Democrats may not be able to pass various other priorities, including Build Back Better, the George Floyd Justice in Policing Act, immigration reform, gun safety regulations, and protection of reproductive rights.

“It's not just on Manchin, it's on [Senate Majority Leader Chuck] Schumer and Biden, who all represent a sort-of old-guard status quo of Congress that is not moving any of these pieces of legislation forward,” Bowman said. “And then when you see declining approval rating numbers, then you wonder why, and you get upset and the administration doesn't seem to know what to do about that.”

"Biden ran on these things, and these things aren't moving,” Bowman said. “Don't run as a progressive and then get in and don't do anything, or do very little to move the progressive agenda forward."

“Hopefully we can hit the ground running in January. Because if we don't, then we don't have a shot,” he said of Democrats retaining their slim House majority in the 2022 elections. “It's gonna be hard to keep the majority if we don't come out swinging in early January."

“We need historic leadership from Biden,” Bowman said, “and we need historic leadership from Schumer,” he added of his home-state senior senator who ascended to Senate Majority Leader of the 50-50 Senate this year.

#### AND it’ll include climate

Gold 12-20 (Rich Gold, partner and leader of the Public Policy and Regulation team at Holland & Knight, D.C. lobbying firm; interviewed by Jim O’Brien, host of The Political Life podcast, “Can "Build Back Better" Come Back from the Dead?” The Political Life, 12-20-2021, <https://thelobbyingshow.libsyn.com/can-build-back-better-come-back-from-the-dead>) \*machine transcribed by otter.ai, manually corrected by Kevin McCaffrey

Jim O’Brien 1:36 Yes. Yes. Great actor. So Rich, busy week in Washington with an incredible ending, wrapping up 2021 with Senator Manchin saying kind of out loud what people were thinking and that he is a no on Build Back Better. So asking you a very open ended question. What's the buzz in Washington? Why do you think he felt the need or made that announcement? And then secondly, which you can go right into, what happens from here?

Rich Gold 2:24 So if we're, if we're talking about Festivus, it's a it's important to know that Senator Manchin started the airing of grievances early this year. On the Sunday morning talk shows where he could speak to all of West Virginia via Fox News. You know, look, everybody out there, you just need to chill. It's the holidays. We've been doing this forever, right? Like the whole year, we've been legislating these major bills, everybody's tired and cranky, and just wants to open presents. And we're almost there. This too shall pass. I'm not suggesting that it's a non-event. Obviously, it is a significant bump in the road. But I think what Senator Manchin was saying is that he has concerns about the House bill as passed, with the modifications that the Senate has so far made to it. The question at the end of the day is what does he support in these bills? Well, his Committee, the Senate Energy and Natural Resources Committee, marked up its version, its title of the bill this week. And obviously, he strongly supports that, and other Democrats support it. And that's a big chunk of change that will be helpful for our energy transition. He's been supportive of a lot of the energy tax breaks that are contained in the finance component of bill. I think where he runs into problems is things that, from his perspective, are illusory in terms of their promise. So the child tax credit is his sort of number one example. We are only continuing it for one more year in the bill, but the expectation is that it would last far beyond there. We're just not going to pay for it right now. And he has big concerns about that. So I think probably what you'll see at the end of the day, if we're able to get these things back on track, generally after everybody chills out, chill out out there, is a bill that has fewer components to it. That lasts for the full budget window, the full ten years, or the vast majority of those years, and that has, from the senator's perspective, honest scoring. In that sense, we're not starting programs that we phase out, even though we know they're gonna continue. And that sort of thing. This is not to diminish what happened yesterday, you know, yesterday was a tough day for the process. And certainly our thought before Sunday was that, you know, there was a chance we could finish this all up in January. That's clearly off the table, you know, we'll be doing well to finish it off, in, you know, the first quarter of 2022. But there were certainly a lot of bumps in the road, with the Affordable Care Act and President Obama's first year and second year, we didn't get there till the Q2. And we may not get through Build Back Better or whatever supplants it until Q2. But there are a lot of things in that bill that can be resuscitated that Senator Manchin supports including things like free pre-K, which is very popular in his home state. And, obviously, you know, drug pricing, which, you know, generally has had pretty good support in both the House and the Senate. So I don't think we're at the end of the road here, I think we're probably gonna see the body be resuscitated in the new year, and everybody just needs to let their anger evaporate here over the holidays, have a good time, we'll come back. And we'll figure out what the art of the possible is, which is, which is what we do for a living.

JO 6:55 And so the five - very interesting, by the way, that's a very good point. You know, he did say, he didn't support build back better. But as you just pointed out, there are a number of components that he does like and does support. The 500 billion or so for climate change. He has seemed okay with that?

RG 7:18 Yeah, I mean, he has in a lot of that money goes to a technology transition, and helping the economy kind of transition and invest in emerging technologies, and help mature existing technologies. And he seems pretty comfortable with that approach to battling climate change, he believes climate change is real, he believes we need to, we need to do something, some of that money goes to, you know, making coal, you know, doable in terms of carbon capture, some of that money goes to industrial emissions reduction, which he's generally been supportive of. So I think I think there are, you know, a lot of items in in that package that are critical, not only for battling climate change, but are critical as well for making us the global leader in technology around that. And, you know, Senator Manchin has been very strong on those issues as well.

JO 8:29 And, given that, I was a little bit surprised to see the strong reaction from the Biden administration, were they just caught flat footed, or?

RG 8:40 Well, I think, any White House is going to be concerned when they've had a couple of meetings in the last week and didn't hear this coming. So, you know, I think they, they thought they had buttoned up the year with the Senator and agreed to move forward with discussions next year, and that there weren't any more surprises coming. And you know, all of a sudden, they have this thrown at them on the Sunday talk shows with very little heads up. It was it was a tough environment, for sure. And, you know, I think they reacted from that perspective, they too need to kind of get past it and I think we all need to kind of give them a pass. It's the nature of the beast to feel like a little bit frustrated. When do you think you're in one place and you find out very suddenly you're not there. So I think they'll move past it.

### AT: Won’t Pass – Manchin

#### Manchin is only posturing because he needs to look like he’s standing up to Biden – PC will produce a deal jettisoning the CTC and retaining climate – BUT plan ruins Manchin’s balancing act by fiating his vote in favor of a liberal policy

Workman 1-1 (Samuel Workman, Professor of Political Science, West Virginia University, “Understanding Joe Manchin's BBB stance: Likely his standard West Virginia pivot,” Salon, 1-1-2022, https://www.salon.com/2022/01/01/understanding-joe-manchins-bbb-stance-likely-his-standard-west-virginia-pivot\_partner/)

As a scholar and native of the state who has long followed West Virginian politics, I know that Manchin is typically deft in balancing support for government programs that will benefit people in the state with the social conservatism that many adhere to. It is what he did in the "Dead Wrong" ad, and it is what he is trying to do now by delivering tangible benefits on some dimensions, while "standing up" to the president and Democratic leadership on others.

What say the lodestar?

There are reasons to suppose that West Virginians would be in favor of many elements contained in Build Back Better, Biden's package of legislation that aims to fix problems ranging from child care costs to climate change.

The legislation contains not only the child tax credit, which would send monthly payments of up to $300 per child to families across the U.S., but also improvements to the Affordable Care Act, upgraded infrastructure for health care and better access to housing. Its largest portion is $555 billion dedicated to climate change — representing the first major legislative action on climate in the U.S.

In a state where poverty is high, rural health care is sparse and climate change threatens to bring frequent, intense flooding, it seems unimaginable that the senator would fail to support the legislation.

Yet on Dec. 19, 2021, Manchin announced on Fox News that he would not. That Manchin did this on Fox News speaks to the general public sentiment in West Virginia.

It sparked a very public "battle of the Joes" in which Biden maintained that Manchin dealt in bad faith after months of personal cajoling and negotiations by the president. Manchin, for his part, reportedly offered Biden everything in Build Back Better except for the Child Tax Credit.

The fight threatens consequences for man and party. The viability of the razor-thin Democratic majority's ability to govern headed into the 2022 midterms is at stake. But the conflict also poses a major problem for Manchin himself, with Biden using Manchin's opposition to the child tax credit as a political pressure point — publicly shaming the West Virginian for failing to support a measure that would deliver support to many families in his own state.

Reconciliation masks broad agreement

To understand what Manchin opposes, it's useful to understand what reconciliation does to a multidimensional bill.

Normally, major legislative initiatives would each have their own bill. But each would need to pass the Senate with 60 votes in order to avoid a filibuster that could end up killing the bill. To get past that hurdle, Democrats have piled all of Biden's initiatives into what's called a budget reconciliation bill, which only requires a majority of votes to pass — a much lower threshold and one that a united Democratic Party could meet in the Senate.

Yet because legislators must cast a single vote for what is a diverse package, disagreement on one dimension can sink the whole reconciliation bill — even if there is broad agreement on the other proposals. In this case, Manchin wants to jettison the child tax credit, but made an offer that reportedly includes the improvements to the ACA, health care infrastructure, as well as the climate change provisions — remarkable for a senator from a state so dependent on fossil fuels for economic growth and stability.

It is likely Manchin will return to the bargaining table over the next few weeks, absent, or in spite of, the public shaming over the child tax credit from the president.

The typical Manchin pivot

West Virginians tend toward conservative views on typical culture war issues like guns, abortions and race.

The purported support for Build Back Better in West Virginia is likely overstated among the electorate — polling is sparse and generally done by supportive organizations — though West Virginians typically are in favor of government programs that benefit them. Winning elections in West Virginia historically entails candidates pledging to bring home benefits to the state. And this is exactly the approach Manchin typically adopts, delivering policy that has majority support, while signaling his fidelity to culture war issues.

Manchin has continually referred to his constituents as his lodestar: "If I can't go back home and explain it, I can't vote for it."

Normally, Manchin gets pressure on social issues from the more liberal wing of the Democratic Party. This criticism from the wider party is fuel for his positioning and policy goals within the state. On such issues, the more criticism he receives from the left, the better. He is deft at pivoting on this pressure to make policy that has general support in the state, such as displayed in the "Dead Wrong" ad.

The public pressure on child tax credits is not the norm and does not offer the same pivot for Manchin. West Virginians value programs like the child tax credit.

Furthermore, support in the state for child tax credits means Manchin is left exposed politically in a way that damages his ability to maintain the fragile coalition that he normally relies on. And, despite progressive outcry for a primary challenger, make no mistake about it, no other Democrat could hold that West Virginian seat.

Manchin's seeming obstinance can be understood in two ways. He's either a conservative Democrat failing to get behind the president's legislative agenda or he simply wants to prioritize programs within that agenda that keep to a general spending target.

Manchin's opposition to the child tax credit reflects his concern about how the monthly benefit will affect the budget. Simultaneously, colleagues say he is concerned over how lower-income citizens will spend the money, reportedly worrying about it being spent on drugs.

This second concern echoes a common conservative trope. But if a comment like that might hurt a politician in a liberal state, it is understandable in the context of the West Virginia electorate's social conservatism.

Despite Manchin's comments sparking predictions that his position doomed Build Back Better, it may not be as clear cut as that.

The senator's willingness to accept all the other major provisions in the bill leaves plenty of room for bargaining. If Manchin can find a way to do his customary pivot — supporting the Democratic proposals while satisfying his constituents that he's being socially conservative and standing up to the left — he may well get on board and put away the shotgun.

### AT: Won’t Pass – Manchin Climate / Water Down

## Fiat Solves

### Fiat s

## Link

### Multiple Links

#### 1. Ag industries

In fact, when the U.S. Assistant Attorney General for Antitrust went so far as to say that “an examination of whether the law is serving its intended purposes may lead to a conclusion that it is not the right law for the state of the industry at this time,”120 she was met with a “tsunami” of pushback from farmers and legislators.121 Additionally, reform at the local level is unlikely to seriously address the challenges posed by large cooperatives, given that many cooperatives now span several states.122 The “iconic status” of the Capper-Volstead Act among politicians and farmers alike makes policy changes effectively untenable.123

#### 2. Biden gets the blame for agency action

Kathryn E. Kovacs 18, Professor at the University of Rutgers School of Law, JD from Georgetown University Law Center, BA in Psychology from Yale University, “Rules About Rulemaking and The Rise of the Unitary Executive”, Administrative Law Review, 70 Admin. L. Rev. 515, Summer 2018, Lexis

Clearly, there are other reasons for this phenomenon: among them, the President's desire to take political credit or, on the flip side, his recognition that, whatever the outcome, he will be saddled with the political blame. The American public seems to equate the President with the Fourth Branch. Advances in technology and media may be exacerbating this effect. This phenomenon, however, cuts both ways. The President may be inclined to make policy decisions himself so that he can take the credit if the outcome is politically popular, but he may prefer to leave policymaking to his subordinates so that he can distance himself if the outcome is not politically popular. This does not, therefore, account fully for the dramatic [\*557] rise in presidential direct action described below.

[FOOTNOTE]

Daniel A. Farber, Presidential Administration Under Trump 23 (Aug. 9, 2017) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3015591 (envisioning a "feedback cycle in which presidents take control of major agency decisions, fortifying the public's tendency to assign blame to the president for unpopular outcomes, which in turn strengthens the pressure on the president to assert control"); see also COOPER, supra note 333, at 65, 95; Cary Coglianese & Kristin Firth, Separation of Powers Legitimacy: An Empirical Inquiry into Norms About Power, 164 U. PA. L. REV. 1869, 1900 (2016) (finding that people are more likely to blame the President for poor agency outcomes than they are to credit him for positive agency outcomes); Kagan, supra note 1, at 2310; Stack, supra note 334, at 264, 317.

#### 4. Follow-on legislation provokes additional backlash.

Jones and Kovacic 20 (Alison Jones, Professor of Law, King’s College London; and William E. Kovacic, Global Competition Professor of Law and Policy, Professor of Law, and Director of the Competition Law Center, at George Washington University Law School, former General Counsel, Commissioner, and Chairman of the Federal Trade Commission; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

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

A. Judicial Resistance to Extensions of Existing Antitrust Doctrine

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

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

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

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

## Winners win

### 2NC---AT: Winners Win

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

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

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

the country into a clean energy transition.