# NEG Wiki Doc---Fullertown R5

### 1NC --- T --- Industry

**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 --- Adv CP

Next OFF is the Advantage Counterplan:

#### The United States Federal Government should:

#### --rule for the Federal Trade Commission in its suit against Facebook and deny cert in appeals to this case.

Solves FTC cred – their evidence only says that wins are key, facebook is a bigger win

### 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 provokes partisan divisions

Hamilton and Schmidt 12-8 (Jesse Hamilton, reporter on US Financial Regulation at Bloomberg; and Robert Schmidt, reporter at Bloomberg; “Crypto Chiefs Face Democrat Skeptics, GOP Supporters at House Hearing,” Bloomberg, 12-8-2021, <https://www.bloomberg.com/news/articles/2021-12-08/crypto-chiefs-face-democrat-skeptics-gop-supporters-at-hearing>)

Executives of major cryptocurrency firms stepped into the glare of congressional scrutiny for the first time on Wednesday, telling lawmakers the burgeoning industry needs federal oversight but resisting some of the hardline policies that regulators have advocated.

One flashpoint was whether digital tokens are securities that should be policed by the Securities and Exchange Commission. Testifying before the House Financial Services Committee, Coinbase Global Inc. Chief Financial Officer Alesia Haas said she disagrees with such an approach, arguing that decades-old rules designed for assets such as stocks aren’t appropriate for digital tokens.

The nearly five-hour-long hearing could help further legitimize crypto, though it also revealed the difficulties federal officials face in regulating the industry. Leaders of Coinbase, Circle Internet Financial Inc., the FTX derivatives exchange and other firms endured a battery of questions on how their businesses should be overseen, and the executives answered without getting into controversial arguments. Still, the clear partisan divisions that emerged between lawmakers showed that the prospects for passing legislation to regulate crypto are dim.

The appearance did allow the executives to tout the new technologies and could be a milestone for the young and rapidly growing industry. The stakes are high: As lawmakers and regulators struggle over how to monitor tokens, tens of millions of Americans have rushed to invest in them, making a roughly $2.4 trillion market.

The testimony also highlighted the steep learning curve that many officials in Washington have. Democrats raised concerns about fraud and other abuses while Republicans cautioned against too much regulation slowing down innovation.

#### 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 --- T --- Per Se

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

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

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

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

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

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

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

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

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

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

#### Voting issue---key to link uniqueness and preventing bidirectionality on an otherwise virtually unlimited topic

### 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 anticompetitive practices by nucleus participants at the root layer of blockchains.

#### There is broad range for the FTC to target blockchain under section 5

Thomas 20 --- Ryan C. Thomas is a partner in the Washington, DC office of Jones Day. Peter Julian is an associate in the firm’s San Francisco office. The authors wish to recognize and thank Jones Day summer associate and UC Hastings College of Law student Amul Kalia for his valuable contributions to this article. The views and opinions set forth herein are the personal views or opinions of the authors; they do not necessarily reflect views or opinions of Jones Day, BLOCKCHAIN TECHNOLOGY: A FUTURE ANTITRUST TARGET?, The Journal of the Antitrust, UCL and Privacy Section of the California Lawyers Association, Vol 30, No. 2 Fall 2020

Section 5 of the FTC Act prohibits unfair competition.76 The FTC has adopted an expansive and at times controversial interpretation of its enforcement powers under this statute, asserting that Section 5 applies to any “deceptive, collusive, coercive, predatory, unethical, or exclusionary conduct or any course of conduct that causes actual or incipient harm to competition,” including conduct that is not covered by the Sherman Act.77 One of the more common applications of Section 5 involves invitations to collude—efforts by one firm to enter into an anticompetitive price fixing or market allocation agreement with one or more of its competitors.78

Because blockchains can be used to share information, they could potentially be used to “signal” future plans to rivals and invite them to follow suit. For example, a competitor could use blockchain transaction histories to demonstrate to its competitors that it had been consistently charging a particular price, and then—successfully or unsuccessfully— suggest that they do the same. Or if a blockchain allowed rivals’ access to prospective pricing or other competitively sensitive information, that could be used to signal plans and invite others to follow. Such activity may be viewed as an invitation to collude in violation of Section 5, particularly if there is evidence that competitors’ subsequent transactions and posted prices were impacted by the signal.

### 1NC --- K

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

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

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

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

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

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

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

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

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

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

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

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

### 1NC --- States

#### Text: The 50 states and relevant territories should engage in multistate antitrust action and enforcement over anticompetitive practices by nucleus participants at the root layer of blockchains.

#### 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.

## FTC

### Turn

#### Cred collapses inevitable

**Lopez-Galdos 21**—(Global Competition Counsel at the Computer & Communications Industry Association, previously served as Director of Competition & Regulatory Policy, and is a professor at George Washington University Competition Law Center and at the University of Melbourne Law School). Marianela 7-28-21. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils”. Disruptive Competition Project. <https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/>

One of the most **challenging matters to tackle** when it comes to leadership of antitrust authorities, or administrative agency for that matter, is legacy and the impact for the future of the agency. To put it simply, while antitrust leaders leave agencies, the side effects of leadership’s **successes and failures** **condition the future of the agencies**. Their leadership **has consequences** and **sets precedent** which will **bind the agency** well into the future.

Under the **current political context**, it would not be surprising if the current Neo-Brandeisian FTC enjoyed political support and success with its decision to bring big cases, especially against leading tech companies. In the short term, if the FTC makes headlines for opening cases against “Big Tech”, policymakers pushing for antitrust reforms will surely applaud the new changes as they would reflect a commitment to enhanced enforcement outcomes notwithstanding the strength of the cases.

However, in the mid-and long-term, if the **FTC loses** the big cases, the **commitment to policy outcomes won’t be met**. And then, it is **unlikely** that the question would be whether the **antitrust norms** are fit for **today’s economy**, but rather if the agency is **capable of executing its mandate effectively**. The recent decision in the **FTC v. Facebook** case is a good example of this paradigm, where the Judge expressed that the FTC had **not carried out a sufficiently robust analysis** supported by evidence, and therefore dismissed the case.

Eventually, the agency’s short-term reputational gains could quickly turn into a **debacle for the institution itself** with the caveat that by then, most probably, Neo-Brandeisian leadership will be long gone. Unfortunately then, the **U.S. antitrust system** — which is the only one to keep two **federal antitrust agencies**, bringing about positive outcomes for consumers — might be at risk. **Political support** to **merge these two institutions** could **gain even more support**, as has happened in the past, to the **detriment of consumers**.

#### Turn --- collapsing cred key to presidential antitrust flex --- solves innovation

**McGinnis 21**—(George C. Dix Professor in Constitutional Law at Northwestern Pritzker School of Law). John O. McGinnis & Linda Sun. 2021. “Unifying Antitrust Enforcement for the Digital Age”. 78 Wash. & Lee L. Rev. 305.

Antitrust law has always affected foreign policy. That much is evident in the various international antitrust organizations and agreements in existence.189 Enforcement decisions, even those involving only domestic companies, have **political and economic ramifications** for the United States internationally.190 However, antitrust law plays a particularly important role in international politics today due to the rise of technology. Technology has revolutionized foreign intelligence and espionage.191 Accordingly, countries have **grappled for control of the tech**nology industry, notably **China** and the **U**nited **S**tates, 192 initiating “the **technology cold war**.”193 Both the United States and China have **used antitrust** regulation to further their position in this technology war.194 Therefore, **tech**nological advancement requires that **antitrust enforcement** be **carefully coordinated** with **foreign policy**.

The executive branch, specifically the President, **directs and controls** relations with international entities.195 Thomas Jefferson described the President as “the only channel of communication between the United States and foreign nations.”196 Traditional descriptions of executive power by political writers have necessarily included **foreign affairs powers**.197 The Constitution specifically enumerates the President’s power to make treaties, appoint ambassadors, and control the army and navy.198 These designations enable the President to conduct diplomacy with foreign nations.199 The Supreme Court has affirmed that the President is “the sole organ of the federal government in the field of international relations.”200 The Secretary of State, the Foreign Service, and the U.S. Agency for International Development report to the President and carry out his or her foreign policy.201 Outside of constitutional grants of power, as a practical matter, the President is generally **privy to info**rmation relevant to foreign affairs on a **more up-to-date basis** than other governmental bodies.202 His or her constitutional power and **comparative information advantage** both place the President in a position to **direct international relations** and **safeguard against foreign threats**. Therefore, the **President** must **directly oversee** antitrust policy to carry out his or her constitutional **foreign policy** duties.

The President has such **direct oversight** of the DOJ. The President **appoints the Attorney General** and Assistant Attorneys General 203 and retains the power to fire these agents at will.204 The Antitrust Division has a **particularly hierarchal structure** wherein the President appoints an Assistant Attorney General who oversees the entire Antitrust Division.205 The **same cannot be said for the FTC**. The FTC is an **independent** agency, and heads of the agency can **only be removed** by the President for good cause.206 The President may exert political pressure on the FTC as an independent agency to take a specific action, but he is **not able to direct the agency** in the same way.207 And, since the Supreme Court upheld the constitutionality of the independence of the FTC,208 the President has **never fired any Commissioner**.

Under **dual antitrust enforcement**, the President is thus ~~handicapped~~ [**hindered**] in his or her direction of antitrust policy. The FTC and DOJ jointly represent the United States in multiple international antitrust organizations, such as the Internal Competition Network209 and Competition Committee of the Organization for Economic Cooperation and Development.210 The FTC has the power to enforce its antitrust judgments abroad,211 which further **hinders** the President’s ability to form cohesive international policies. Further, the FTC does not distinguish between its international and domestic activities. After the agency determines its enforcement policies, it “enforces them to the fullest extent of its jurisdictional authority, whether foreign or domestic.”212 This could give rise to antitrust decisions that cut against the nation’s best interest. Antitrust policy is a tool in the toolbox when it comes to navigating a complex global economy and political landscape. It should be used in the context of the country’s **overall international policies and goals**.

**Tech innovation high --- expanding the scope of antitrust laws stifles it --- Causes China tech dominance**

**Packard 6-22** --- Clark Packard, Trade Policy Counsel, Finance Insurance & Trade, R-Street, “Hamstringing America’s most innovative firms is no way to compete with China”, JUN 22, 2021, https://www.rstreet.org/2021/06/22/hamstringing-americas-most-innovative-firms-is-no-way-to-compete-with-china/

The United States is locked into a **geopolitical competition with China** over the commanding heights of the 21st century economy. Much of the competition revolves around the nexus of international trade and investment and technology. **Washington has very legitimate concerns about China’s pursuit of indigenous innovation through high tech industrial policy**, but the situation warrants a smart response. At a time when policymakers are signaling their desire to outcompete China economically, **why are they also rushing to** ~~hobble~~ **[stifle] private sector American tech**nology **and innovation?**

Over the last several weeks, lawmakers have introduced five separate bills in United States House of Representatives aimed at cracking down on “Big Tech.” I’m not an antitrust scholar, but as my colleague Dr. Wayne Brough has written, the bills would, if enacted, “impose the most significant overhaul of the nation’s antitrust laws in our country’s history.” Rather than broad and durable antitrust principles that apply to all sectors of the economy, which have guided our competition policy for more than a century, the legislation under consideration is aimed squarely at large tech companies in the United States.

It is worth considering the **geopolitical and international economic ramifications of such a radical departure from existing law.**

In 2018, the United States released a report documenting China’s predatory commercial practices, which served as an indictment of sorts. The overarching theme of the report is that Beijing uses a number of unfair and pernicious methods to acquire American technology with the ultimate goal of supplanting the United States as the global leader in high tech innovation. Specifically, the report alleges that China pressures American firms into transferring technology to Chinese joint-venture partners as the cost of doing business—reaching the 1.4 billion potential consumers—in the country; China abuses intellectual property; engages in targeted foreign investment to acquire strategic American firms and assets; and with pervasive state support, hacks into commercial networks to steal trade secrets. On top of that, China provides massive subsidies to its leading technology firms to pursue research and development in critical areas. **These are very serious problems**, and demand a thoughtful and targeted response.

Instead, the United States has flailed at China. The Trump administration imposed tariffs, which triggered predictable retaliation against American exporters, imposed significant costs onto American consumers—both families and firms—and will almost certainly fail to change Beijing’s predatory commercial practices. It is estimated that the tariffs cost about 300,000 American jobs and lowered market capitalization by about $1.7 trillion through diminished investment, according to the New York Federal Reserve. In other words, the tariffs made the United States weaker and less competitive. Now, some in Congress want to pursue misguided antitrust policies that will unintentionally undermine the United States’ global competitiveness.

The firms targeted by the proposed legislation are among America’s **most globally competitive and innovative.** They drive **significant investment in cutting-edge tech**nologies like robotics and artificial intelligence, the types of research China is pursuing through its Made in China 2025 indigenous innovation industrial policy. A recent report from the Progressive Policy Institute (PPI) highlights how many of the largest American tech firms—Amazon, Alphabet (Google’s parent company), Intel, Facebook, Microsoft and Apple—were among the top 15 nonfinancial firms driving U.S. capital expenditures in 2020. Together, PPI estimates that these six firms made nearly $90 billion worth of private investment in 2020—up 6 percent from 2019, which is remarkable considering that the U.S. economy was lagging in 2020 due to the outbreak of COVID-19. Cracking down on these firms will mean less investment in research and development.

These American firms already must compete with heavily subsidized foreign competitors and face discriminatory foreign practices, particularly in China. Despite these hurdles, the American tech industry pushes the envelope on exactly the type of research and development that policymakers in the United States should welcome. These firms lead the world in current and next-generation technologies. Instead of embracing this type of American global commercial and technological leadership, or at least staying neutral toward it, the legislation under consideration would **favor foreign competitors** by [stifling] ~~kneecapping~~ our domestic technology firms with **heavy-handed regulation**, which will almost certainly benefit their foreign competitors.

The American tech industry is the envy of the world. That’s why China, the European Union and others are trying to mimic it through subsidies and discriminatory practices against foreign competition. Yet those policies are no match for a relatively free and dynamic economy fostered by existing competition policies. It simply **belies common sense** that the way to outcompete Beijing is by making the United States **weaker, less efficient and less dynamic through misguided efforts to single out** our most **globally competitive and successful firms**.

### UQ

#### Recent disgorgement wins BOTH thump their court victories link AND their impact because they terminally flatlined FTC’s institutional legitimacy

Kruckenberg 1-3 (Caleb Kruckenberg, attorney at Pacific Legal Foundation, “The FTC's rebellion against the judiciary,” The Hill, 1-3-2022, <https://thehill.com/opinion/judiciary/587728-the-ftcs-rebellion-against-the-judiciary>)

The Federal Trade Commission (FTC) must be held accountable for its open defiance of the Supreme Court’s directives.

For decades, the FTC relied on a statute authorizing “permanent injunctions” to obtain monetary fines. That always seemed strange. After all, neighboring sections of the law allow the commission to seek limited monetary penalties, while injunctions normally only prevent future action and do not entail an award of any damages. Yet “disgorgement” awards — the return payment of supposedly illegal gains — became so pervasive that in 2019, for example, courts ordered that $723.2 million be paid to the government in such awards.

The Supreme Court seemingly put that practice to an end in April, in AMG Capital Management, LLC v. FTC, when it unanimously held that the statute never allowed the “Commission to seek, and a court to award, equitable monetary relief such as restitution or disgorgement.” Disgorgement was just an illegal power grab.

Since then, the agency has scrambled to find a replacement for its most significant enforcement tool. In a memo sent to FTC staff when she assumed her role, Chair Lina Khan stressed the need to use the agency’s “full set of tools and authorities … post-AMG.”

So, when the FTC bragged in a recent news release about obtaining $21 million “for consumers” in a case involving alleged unfair practices, we wondered just how the agency managed to get such a large award without disgorgement.

It turns out not to be so hard when you ignore the Supreme Court. Khan must have meant that the agency would simply ignore any Supreme Court decisions it dislikes. The $21 million was part of a settlement, approved by a federal judge, ordering restitution with any remainder “to be deposited to the U.S. Treasury as disgorgement.” And looking further, we realized that the FTC entered into the same kind of settlement just a few weeks earlier. The agency is acting like the AMG decision doesn’t exist.

This conduct would be stunning if it weren’t so predictable. In a recent interview, Khan was direct about her vision for the agency — worrying not about “overreaching” but about “neutering the tools” available to the agency. It is peak hypocrisy for the agency charged with protecting the public from unfair and deceptive practices to employ tactics it knows are illegal to strong-arm settlements in litigation. Make no mistake: Forcing illegal disgorgement payments is akin to extortion.

Consider a typical case. The FTC obtains an injunction against a defendant with no notice or opportunity for the defendants to challenge it, which forces the target company into receivership. Many defendants first learn about the enforcement action when a receiver arrives with a court order to take over the business. To defend themselves, defendants must petition the receiver for the release of funds to pay their legal fees.

With both hands tied behind their backs, companies unjustly accused of wrongdoing can barely muster a fight. But when disgorgement is possible and the agency can ask for, and a court can order, essentially unlimited fines, the stakes become truly dire. Few dare to fight the charges, even when they are unfounded.

Disgorgement is not a legal option, though. Congress instead limited the FTC’s authority, likely to protect against such asymmetry in power. A unanimous Supreme Court confirmed as much just months ago. And if the FTC can ignore the law to demand payment through disgorgement in exchange for a settlement, it’s no better than the mob demanding protection money.

Maybe the commission thought no one would notice. After all, few people regularly read the details of its settlement agreements. But we did.

The FTC should have to answer for its continued abuses. The Supreme Court’s directives were clear, but the agency has not followed its legal duty. Perhaps it’s time for another branch — Congress — to demand answers.

This isn’t just about the FTC or unfair practices. It’s about power. And power has been the driving force at the Khan-led FTC. If any ordinary American ignored the law, they’d be held responsible. And so should those tasked with enforcing the law.

That’s particularly true today when punishments have ballooned. Crushing civil fines can shut down a company overnight. They ought to at least have the chance to know the potential penalties they face. Yet, if FTC gets its way, companies’ futures will hinge on the whim or caprice of regulators unbounded by congressional statutes, the Supreme Court, or any legal constraint. That’s a kind of power that undermines not only the FTC’s institutional legitimacy but the rule of law itself.

### City-Based Innovation---No Impact---1NC

#### Squo solves city innovation – your author

Greg Clark 21, Group Advisor for Future Cities at the HSBC Group, Former Research Scholar at the London School of Economics and Political Science, Degree from the University of Cambridge, Former Harkness Fellow at Columbia University, “Global Cities Desperately Need New Leadership Models”, 12/8/2021 https://hbr.org/sponsored/2021/12/global-cities-desperately-need-new-leadership-models

Over the past 20 years, Manchester, U.K., has steadily built a grand coalition of nine neighboring municipalities working together with universities, investors, and businesses committed to a place-leadership agenda that has enabled the delegation of new authority, the acquisition of new financial powers, and the creation of new leadership structures in a “combined authority” for the city region.

The Greater Sydney Commission is a new kind of city regional leadership platform where civic leaders are selected for their expertise to shape a long-term agenda beyond the short-term mandates and political cycles, but are accountable to and influential upon them.

Barcelona Global has been established as a coalition of corporations, institutions, entrepreneurs, academics, skilled migrants, and investors who want to help shape the Barcelona of 2050. The coalition is working at the spaces within and between the formal levels of governance: municipal, state, national, and European Union.

In China, the emergence of the great city clusters in the megaregions of the Greater Bay Area, the Yangtze River Delta, and the Jing-Jin-Ji region shows a new scale for subnational leaders to oversee and coordinate networks of interdependent cities.

In Colombia, we observe proactive citizen leadership in Medellín and civic-minded business leadership in Bogotá, fostering new tools and platforms for place leadership to emerge.

#### No internal link – zero ev city innovation collapses absent plan - Sitaraman proves investment inev

### AI---FTC Fails---1NC

#### FTC can’t solve AI

Heaven 21 (Will Douglas Heaven, senior editor for AI at MIT Technology Review, covers new research, emerging trends and the people behind them. Previously, founding editor at the BBC tech-meets-geopolitics website Future Now and chief technology editor at New Scientist magazine, April 21st 2021, “This has just become a big week for AI regulation” MIT Technology Review <https://www.technologyreview.com/2021/04/21/1023254/ftc-eu-ai-regulation-bias-algorithms-civil-rights/>) MULCH

One big limitation common to both the FTC and European Commission is the inability to rein in governments’ use of harmful AI tech. The EU’s regulations include carve-outs for state use of surveillance, for example. And the FTC is only authorized to go after companies. It could intervene by stopping private vendors from selling biased software to law enforcement agencies. But implementing this will be hard, given the secrecy around such sales and the lack of rules about what government agencies have to declare when procuring technology.

#### Can’t solve – their impact is about killer drones and military AI – no way the FTC solves that with antitrust

### AI---FTC Fails---2NC

#### Constrained by limited resources

Calo 21 [Ryan Calo, Professor of Law, University of Washington, 4-27-2021 https://theconversation.com/ftc-warns-the-ai-industry-dont-discriminate-or-else-159622]

How much should industry or the public read into a blog post by one government attorney? In my experience, FTC staff generally don’t go rogue. If anything, that a staff attorney apparently felt empowered to use such strong rhetoric on behalf of the commission confirms a broader basis of support within the agency for policing AI.

Can a federal agency, or anyone, define what makes AI fair or equitable? Not easily. But that’s not the FTC’s charge. The agency only has to determine whether the AI industry’s business practices are unfair or deceptive – a standard the agency has almost a century of experience enforcing – or otherwise in violation of laws that Congress has asked the agency to enforce.

Shifting winds on regulating AI

There are reasons to be skeptical of a sea change. The FTC is chronically understaffed, especially with respect to technologists. The Supreme Court recently dealt the agency a setback by requiring additional hurdles before the FTC can seek monetary restitution from violators of the FTC Act.

#### Regulation is vital – FTC alone fails because it’s constrained and can’t provide prescriptive regulations

Ajo 21 [Esther Ajao, News Writer - TechTarget , 10-19-2021 https://searchenterpriseai.techtarget.com/feature/FTC-pursues-AI-regulation-bans-biased-algorithms]

While the RealPage case involved the FTC regulating how companies use data, if not algorithms specifically, the FTC is constrained by the limits of its own authority.

"The FTC is a law enforcement agency," Schildkraut said, noting that it can only act on complaints or discoveries of violations. "It's not providing prescriptive regulation saying you need to do 'X, Y, Z' in order to comply with the law because the United States doesn't have a generally applicable statute saying that if you're using artificial intelligence, you've got to have a bias impact statement or any other particular feature."

However, Schildkraut added that this approach fits with what the FTC has done in the past to enforce other provisions of the law -- responding to complaints about alleged violations such as misleading consumers or failing to provide disclosures and harming consumers.

"The FCRA is definitely not a comprehensive AI regulatory framework," said John Davisson, senior counsel at the Electronic Privacy Information Center. "It's not imposing clear fairness obligations or requiring companies that use AI to validate the tools that they're using or even imposing nondiscrimination requirements."

Kashyap Kompella, analyst at RPA2AI research, said in a previous interview with SearchEnterpriseAI that in the absence of regulation, many organizations fail to meet the core principles of AI ethics: safe, accountable, transparent and trustworthy.

"The current stage in the industry is that these are self-regulatory," Kompella said in the interview.

Because oversight is currently self-regulatory, many companies turn to AI as a "cheap and easy solution to all their problems," Davisson said. "There may be lots of situations where AI is not appropriate and shouldn't be used at all."

The most effective way for consumers to be protected against harmful AI-based determinations about them is comprehensive regulation, Davisson said. Without meaningful regulation, companies do not feel the pressure to ensure that the tools they're using are free from bias.

#### FTC alone fails in AI – empirics prove they’re outmatched by tech firms

Robertson 21 [Adi Robertson, Senior Reporter at The Verge, 4-20-2021 https://www.theverge.com/2021/4/20/22393873/ftc-ai-machine-learning-race-gender-bias-legal-violation]

The US Federal Trade Commission has warned companies against using biased artificial intelligence, saying they may break consumer protection laws. A new blog post notes that AI tools can reflect “troubling” racial and gender biases. If those tools are applied in areas like housing or employment, falsely advertised as unbiased, or trained on data that is gathered deceptively, the agency says it could intervene.

“In a rush to embrace new technology, be careful not to overpromise what your algorithm can deliver,” writes FTC attorney Elisa Jillson — particularly when promising decisions that don’t reflect racial or gender bias. “The result may be deception, discrimination — and an FTC law enforcement action.”

As Protocol points out, FTC chair Rebecca Slaughter recently called algorithm-based bias “an economic justice issue.” Slaughter and Jillson both mention that companies could be prosecuted under the Equal Credit Opportunity Act or the Fair Credit Reporting Act for biased and unfair AI-powered decisions, and unfair and deceptive practices could also fall under Section 5 of the FTC Act.

“It’s important to hold yourself accountable for your algorithm’s performance. Our recommendations for transparency and independence can help you do just that. But keep in mind that if you don’t hold yourself accountable, the FTC may do it for you,” writes Jillson.

Artificial intelligence holds the potential to mitigate human bias in processes like hiring, but it can also reproduce or exaggerate that bias, particularly if it’s trained in data that reflects it. Facial recognition, for instance, produces less accurate results for Black subjects — potentially encouraging false identifications and arrests when police use it. In 2019, researchers found that a popular health care algorithm made Black patients less likely to receive important medical care, reflecting preexisting disparities in the system. Automated gender recognition tech can use simplistic methods that misclassify transgender or nonbinary people. And automated processes — which are frequently proprietary and secret — can create “black boxes” where it’s difficult to understand or challenge faulty results.

The European Union recently indicated that it may take a stronger stance on some AI applications, potentially banning its use for “indiscriminate surveillance” and social credit scores. With these latest statements, the FTC has signaled that it’s interested in cracking down on specific, harmful uses.

But it’s still in the early days of doing so, and critics have questioned whether it can meaningfully enforce its rules against major tech companies. In a Senate hearing statement today, FTC Commissioner Rohit Chopra complained that “time and time again, when large firms flagrantly violate the law, the FTC is unwilling to pursue meaningful accountability measures,” urging Congress and other commissioners to “turn the page on the FTC’s perceived powerlessness.” In the world of AI, that could mean scrutinizing companies like Facebook, Amazon, Microsoft, and Google — all of which have invested significant resources in powerful systems.

### AI D

#### Zero risk of their AI impact---countermeasures, reliance on humans, no motive, coevolution, research is infancy, and comprehensive testing all check

Bentley 18—Honorary Professor and Teaching Fellow at the Department of Computer Science, University College London [Peter J., March 2018, “The Three Laws of Artificial Intelligence: Dispelling Common Myths”, Should we fear artificial intelligence?, European Parliamentary Research Service, PE 614.547, <http://doc989.consiglioveneto.it/oscc/resources/EPRS_IDA(2018)614547_EN.pdf#page=8>] AMarb

One of the most extraordinary claims that is oft-repeated, is that AI is somehow a danger to humankind, even an “existential threat”. Some claim that an AI might somehow develop spontaneously and ferociously like some exponentially brilliant cancer. We might start with something simple, but the intelligence improves itself out of our control. Before we know it, the whole human race is fighting for its survival (Barrat, 2015). It all sounds absolutely terrifying (which is why many science fiction movies use this as a theme). But despite earnest commentators, philosophers, and people who should know better than spreading these stories, the ideas are pure fantasy. The truth is the opposite: AI – like all intelligence – can only develop slowly, under arduous and painful circumstances. It’s not easy becoming clever. There have always been two types of AI: reality and fiction. Real AI is what we have all around us – the voice-recognising Siri or Echo, the hidden fraud detection systems of our banks, even the number-plate reading systems used by the police (Aron, 2011; Siegel, 2013; Anagnostopoulos, 2014). The reality of AI is that we build hundreds of different and highly-specialised types of smart software to solve a million different problems in different products. This has been happening since the birth of the field of AI, which is contemporary with the birth of computers (Bentley, 2012). AI technologies are already embedded within software and hardware all around us. But these technologies are simply clever tech. They are the computational equivalents to cogs and springs in mechanical devices. And like a broken cog or loose spring, if they fail then that particular product might fail. Just as a cog or spring cannot magically turn itself into a murderous killing robot, our smart software embedded within their products cannot turn itself into a malevolent AI. Real AI saves lives by helping to engage safety mechanisms (automatic braking in cars, or even selfdriving vehicles). Real AI helps us to optimise processes or predict failures, improving efficiency and reducing environmental waste. The only reason why hundreds of AI companies exist, and thousands of researchers and engineers study in this area, is because they aim to produce solutions that help people and improve our lives (Richardson, 2017). The other kind of AI – comprising those super-intelligent general AIs that will kill us all – is fiction. Research scientists tend to work on the former kind of AI. But because this article needs to provide balance in favour of rational common sense, the following sections will dispel several myths in this area. In this article, I will introduce “Three Laws of AI” as a way to explain why the myths are fantastical, if not ludicrous. These “Laws” are merely a summary of the results of many decades of scientific research in AI, simplified for the layperson. Myth 1: A self-modifying AI will make itself super-intelligent. Some commentators believe that there is some danger of an AI “getting loose” and “making itself superintelligent” (Häggström, 2016). The first law of AI tells us why this is not going to happen. First law of AI: Challenge begets intelligence. From our research in the field of artificial life (ALife) we observe that intelligence only exists in order to overcome urgent challenges. Without the right kinds of problems to solve, intelligence cannot emerge or increase (Taylor et al., 2014). Intelligence is only needed where those challenges may be varied and unpredictable. Intelligence will only develop to solve those challenges if its future relies on its success. To make a simple AI, we create an algorithm to solve one specific challenge. To grow its intelligence into a general AI, we must present ever-more complex and varied challenges to our developing AI, and develop new algorithms to solve them, keeping those that are successful. Without constant new challenges to solve, and without some reward on success, our AIs will not gain another IQ point. AI researchers know this all too well. A robot that can perform one task well, will never grow in its abilities without us forcing it to grow (Vargas et al., 2014). For example, the automatic number plate recognition system used by police is a specialised form of AI designed to solve one specific challenge – reading car number plates. Even if some process were added to this simple AI to enable it to modify itself, it would never increase its intelligence without being set a new and complex challenge. Without an urgent need, intelligence is simply a waste of time and effort. Looking at the natural world this is illustrated in abundance – most challenges in nature do not require brains to solve them. Only very few organisms have needed to go to the extraordinary efforts needed to develop brains. Even fewer develop highly complex brains. The first law of AI tells us that artificial intelligence is a tremendously difficult goal, requiring exactly the right conditions and considerable effort. There will be no runaway AIs, there will be no self-developing AIs out of our control. There will be no singularities. AI will only be as intelligent as we encourage (or force) it to be, under duress. As an aside, even if we could create a super-intelligence, there is no evidence that such a superintelligent AI would ever wish to harm us. Such claims are deeply flawed, perhaps stemming from observations of human behaviour, which is indeed very violent. But AIs will not have human intelligence. Our real future will almost certainly be a continuation of the situation today: AIs will coevolve with us, and will be designed to fit our needs, in the same way that we have manipulated crops, cattle and pets to fit our needs (Thrall et al., 2010). Our cats and dogs are not planning to kill all humans. Likewise, a more advanced AI will fit us so closely that it will become integrated within us and our societies. It would no more wish to kill us than it would kill itself. Myth 2: With enough resources (neurons/computers/memory) an AI will be more intelligent than humans. Commentators claim that “more is better”. If a human brain has a hundred billion neurons, then an AI with a thousand billion simulated neurons will be more intelligent than a human. If a human brain is equivalent to all the computers of the Internet, then an AI loose in the Internet will have human intelligence. In reality, it is not the number that matters, it is how those resources are organised, as the second law of AI explains. Second law of AI: Intelligence requires appropriate structure. There is no “one size fits all” for brain structures. Each kind of challenge requires a new design to solve it. To understand what we see, we need a specific kind of neural structure. To move our muscles, we need another kind. To store memories, we need another. Biology shows us that you do not need many neurons to be amazingly clever. The trick is to organise them in the right way, building the optimal algorithm for each problem (Garner and Mayford, 2012). Why can’t we use maths to make AIs? We do use a lot of clever maths and because of this some Machine Learning methods produce predictable results, enabling us to understand exactly what these AIs can and cannot do. However, most practical solutions are unpredictable, because they are so complex and they may use randomness within their algorithms meaning that our mathematics cannot cope, and because they often receive unpredictable inputs. While we do not have mathematics to predict the capabilities of a new AI, we do have mathematics that tells us about the limits of computation. Alan Turing helped invent theoretical computer science by telling us about one kind of limit – we can never predict if any arbitrary algorithm (including an AI) will ever halt in its calculations or not (Turing, 1937). We also have the “No Free Lunch Theorem” which tells us there is no algorithm that will outperform all others for all problems – meaning we need a new AI algorithm tailored for each new problem if we want the most effective intelligence (Wolpert, 1996; Wolpert and Macready, 1997). We even have Rice’s Theorem which tells us that it is impossible for one algorithm to debug another algorithm perfectly – which means that, even if an AI can modify itself, it will never be able to tell if the modification works for all cases without empirical testing (Rice, 1953). To make an AI, we need to design new structures/algorithms that are specialised for each challenge faced by the AI. Different types of problem require different structures. A problem never faced before may require the development of a new structure never created before. There is no universal structure that will suit all problems – the No Free Lunch Theorem (Wolpert, 1996; Wolpert and Macready, 1997) tells us this (see box). Therefore, the creation of ever greater intelligence, or the ability to handle ever more different challenges, is a continual innovation process, with the invention of new structures required that are tailored to every new challenge. A big problem in AI research is figuring out which structures or algorithms solve which challenges. Research is still in its infancy in this area, which is why today all AIs are extremely limited in their intelligences. As we make our AIs cleverer (or if we ever manage to figure out how to make AIs that can keep altering themselves) we encounter yet more problems. We cannot design the intelligence in one go, because we have no mathematics to predict the capabilities of a new structure, and because we have insufficient understanding of how different structures/algorithms map to which challenges. Our only option in designing greater intelligences is an incremental, try-and-test approach. For each new structure, we need to incorporate it into the intelligence without disrupting existing structures. This is an extremely difficult thing to achieve, and may result in layer upon layer of new structures, each carefully working with earlier structures – as is visible in the human brain. If we want an even cleverer brain like ours, we can also add in the ability of some structures to repurpose themselves if others are damaged – changing their structures until they can at least partially take over the role of lost functions. We have little idea how to achieve this, either. The second law of AI tell us that resources are not enough. We still have to design new algorithms and structures within (and in support of) the AIs, for every new challenge that the AI faces. It is for these reasons that we cannot create general purpose intelligences using a single approach. There is no single AI on the planet (not even the fashionable “Deep Learning”) that can use the same method to process speech, drive a car, learn how to play a complex video game, control a robot to run along a busy city street, wash dishes in a sink, and plan a strategy to achieve investment for a company. When one human brain performs such tasks, it uses myriad different neural structures in different combinations, each designed to solve a different sub-problem. We do not have the capability to make such brains, so instead we build one specialised smart solution for each problem, and we use them in isolation from each other. Myth 3: As the speed of computers doubles every 18 months, AIs will exploit this computing power and grow exponentially cleverer. Commentators claim that sheer brute calculating speed will overcome all challenges in the creation of AI. Use computers that are fast enough and an AI will be able to learn and out-think us. Since the speed of computer processors has been doubling approximately every 18 months for decades, this is surely an inevitability. Sadly, this point of view fails to recognise the impact of an opposing exponential that works as a significant brake on the development of AIs: testing. Third law of AI: Intelligence requires comprehensive testing. Higher intelligence requires the most complex designs in the universe. But every tiny change made in an attempt to improve the design of an intelligence has the potential to destroy any or all of its existing capabilities. It doesn’t help that we have no mathematics capable of predicting the capabilities of a general intelligence (see box). For these reasons, every new design of intelligence needs complete testing on all the problems that it exists to solve. Partial testing is not sufficient - the intelligence must be tested on all likely permutations of the problem for its designed lifetime otherwise its capabilities may not be trustable. All AI researchers know this hard truth only too well: to make an AI, it is necessary to train it and test all its capabilities comprehensively in its intended environment at every stage of its design. As Marvin Minsky, founder of the field of AI said, “…there's so many stories of how things could go bad, but I don't see any way of taking them seriously because it's pretty hard to see why anybody would install them on a large scale without a lot of testing.”(Achenbach, 2016) More than any other aspect, it is the process of testing that requires the most time. This time constraint produces a brake to the process of designing intelligence. At worst, the level of testing is exponential for each incremental gain in intelligence. To understand why, imagine an intelligence that can recognise 10 different colours and needs to distinguish two types of object using this one feature, colour. In this case, the AI can understand at most 10 different kinds of item and classify them into two classes. If its capabilities are expanded to handle two features – say colour and 10 shades of brightness, then it can understand at most 100 different kinds of item. If it could handle 100 features, it can understand 10, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000, 000 items. How do we know that the AI will classify them all correctly? This becomes a very important question for safety-critical applications. Imagine the AI is driving your car and the two classes of object are “road” and “obstacle”. In reality, it’s much more complex. Many biological intelligences can distinguish unimaginable numbers of items, using thousands or millions of features, each of which could take thousands or millions of values. The testing of these intelligences takes a very long time indeed. This should be no great surprise. Evolution creates its biological brains by testing countless trillions of brains in parallel in every possible scenario for thousands of millions of years, only permitting the successful brains to contribute to future brain designs. This is a highly efficient and effective method of testing that we can only dream of performing. The tremendous need to test AIs has significant implications. We cannot design better AIs without testing them at each stage. Google has performed years of testing for its self-driving cars, and continues to do so. (By June 2016, Google had test-driven their fleet of vehicles, in autonomous mode, a total of 2,777,585 km) (Google, 2016). All AI engineers and researchers know that we cannot make use of AIs in any safety-critical application until appropriate testing is performed. In the near future, we will also need certification so that we know exactly how well an AI performs for well-defined tasks. And if the AI continues to learn or it is updated, we cannot assume that because it passed one test earlier it will continue to do so – like a human pilot, any AI that continues to learn must be continuously retested to ensure it remains certified.1 The third law of AI tell us that as intelligence increases, the time required for testing may increase exponentially. Ultimately, testing may impose practical limits to achievable artificial intelligence, and trustable artificial intelligence. Just as it becomes harder and harder to go faster as we approach the speed of light, it becomes harder and harder to increase intelligence as we build cleverer brains. Again, this is a fundamental reason why AI research and application is dedicated to finding smart solutions to very specific problems.2

### Naval Power---No Impact---1NC

#### No impact

Mueller 21 [John; February 17; Adjunct Professor of Political Science and Senior Research Scientist at the Mershon Center for International Security Studies; The Stupidity of War: American Foreign Policy and the Case for Complacency, “The Rise of China, the Assertiveness of Russia, and the Antics of Iran,” Ch. 6]

Hitlers are very rare, but there are some resonances today in Russia’s Vladimir Putin and China’s Xi Jinping. Both are shrewd, determined, authoritarian, and seem to be quite intelligent, and both are fully in charge, are surrounded by sychophants, and appear to have essentially unlimited tenure in office. Moreover, both, like Hitler in the 1930s, are appreciated domestically for maintaining a stable political and economic environment. However, unlike Hitler, both run trading states and need a stable and essentially congenial international environment to flourish.128 Most importantly, except for China’s claim to Taiwan, neither seems to harbor Hitler-like dreams of extensive expansion by military means. Both are leading their countries in an illiberal direction which will hamper economic growth while maintaining a kleptocratic system. But this may be acceptable to populations enjoying historically high living standards and fearful of less stable alternatives. Both do seem to want to overcome what they view as past humiliations – ones going back to the opium war of 1839 in the case of China and to the collapse of the Soviet empire and then of the Soviet Union in 1989–91 in the case of Russia. Primarily, both seem to want to be treated with respect and deference. Unlike Hitler’s Germany, however, both seem to be entirely appeasable. That scarcely seems to present or represent a threat. The United States, after all, continually declares itself to be the indispensable nation. If the United States is allowed to wallow in such self-important, childish, essentially meaningless, and decidedly fatuous proclamations, why should other nations be denied the opportunity to emit similar inconsequential rattlings? If that constitutes appeasement, so be it. If the two countries want to be able to say they now preside over a “sphere of influence,” it scarcely seems worth risking world war to somehow keep them from doing so – and if the United States were substantially disarmed, it would not have the capacity to even try.

If China and Russia get off on self-absorbed pretensions about being big players, that should be of little concern – and their success rate is unlikely to be any better than that of the United States. Charap and Colton observe that “The Kremlin’s idee fixe that Russia needs to be the leader of a pack of post-Soviet states in order to be taken seriously as a global power broker is more of a feel-good mantra than a fact-based strategy, and it irks even the closest of allies.” And they further suggest that

The towel should also be thrown in on the geo-ideational shadow-boxing over the Russian assertion of a sphere of influence in post-Soviet Eurasia and the Western opposition to it. Would either side be able to specify what precisely they mean by a regional sphere of influence? How would it differ from, say, US relations with the western-hemisphere states or from Germany’s with its EU neighbors?129

Applying the Gingrich gospel, then, it certainly seems that, although China, Russia, and Iran may present some “challenges” to US policy, there is little or nothing to suggest a need to maintain a large US military force-in-being to keep these countries in line. Indeed, all three monsters seem to be in some stage of self-destruction or descent into stagnation – not, perhaps, unlike the Communist “threat” during the Cold War. Complacency thus seems to be a viable policy.

However, it may be useful to look specifically at a couple of worst-case scenarios: an invasion of Taiwan by China (after it builds up its navy more) and an invasion o

f the Baltic states of Estonia, Lithuania, and Latvia by Russia. It is wildly unlikely that China or Russia would carry out such economically self-destructive acts: the economic lessons from Putin’s comparatively minor Ukraine gambit are clear, and these are unlikely to be lost on the Chinese. Moreover, the analyses of Michael Beckley certainly suggest that Taiwan has the conventional military capacity to concentrate the mind of, if not necessarily fully to deter, any Chinese attackers. It has “spent decades preparing for this exact contingency,” has an advanced early warning system, can call into action massed forces to defend “fortified positions on home soil with precision-guided munitions,” and has supply dumps, booby traps, an wide array of mobile missile launchers, artillery, and minelayers. In addition, there are only 14 locations that can support amphibious landing and these are, not surprisingly, well-fortified by the defenders.130

The United States may not necessarily be able to deter or stop military attacks on Taiwan or on the Baltics under its current force levels.131 And if it cannot credibly do so with military forces currently in being, it would not be able to do so, obviously, if its forces were much reduced. However, the most likely response in either eventuality would be for the United States to wage a campaign of economic and military (including naval) harassment and to support local – or partisan – resistance as it did in Afghanistan after the Soviet invasion there in 1979. 132 Such a response does not require the United States to have, and perpetually to maintain, huge forces in place and at the ready to deal with such improbable eventualities.

## Blockchain

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

#### Current blockchain initiatives are sufficient.

Matisek 19 (Jahara Matisek, U.S. Military officer, h.D. Candidate in Political Science @ Northwestern University, “Is China Weaponizing Blockchain Technology For Gray Zone Warfare?,” 06/07/19, Global Security Review, <https://globalsecurityreview.com/china-weaponizing-blockchain-technology-gray-zone-warfare/>, GBN-TM)

Conclusion Disruptive blockchain technology is coming – whether or not we want it. There are staggering implications for gray zone warfare, especially from China and other hostile adversaries using Bitcoin technologies against the U.S. and her allies. Western defense communities will need to handle this and acknowledge the troubling reality that gray zone warfare will be harder to detect and deter. Moreover, besides state threats, Bitcoin technologies also make it easier for terrorist groups and violent non-state actors (e.g., criminals, gangs, etc.) to operate as it is almost impossible for security Luckily, the West is not entirely unprepared about blockchain applicability for military uses: the Pentagon is looking into securing databases, the American Defense Advanced Research Project Agency (DARPA) is developing a secure battlefield communication system, and Estonia has rebuilt its government around the technology. These are promising signs, but whoever weaponizes blockchain the fastest (i.e., establishing supremacy in this emerging technology), will undoubtedly achieve the sought after Monroe Doctrine in Cyber Space.

### 1NC---A/C

#### Infrastructure provisions and SEC regulations thump. MSU reads (go) green.

Matt 1AC Sandgren 21, Former Staff Director of the Senate Republican High-Tech Task Force, Former Senior Counsel on the Senate Judiciary Committee, Final Chief of Staff to Senator Orrin G. Hatch, Executive Director of the Orrin G. Hatch Foundation, “How New Regulations from Washington Could Lead to a Blockchain Brain Drain”, The Hill, 10/27/2021, https://thehill.com/blogs/congress-blog/technology/578834-how-new-regulations-from-washington-could-lead-to-a-blockchain

The internet is what it is today—with its ability to connect people across countries, time zones, and cultures—thanks to the friendly regulatory climate it was born into. Sadly, the regulatory climate of 2021 is far less welcoming to disruptive technologies. This is bad news for the future of U.S. innovation and the emerging blockchain industry.

Whether Washington takes a heavy-handed or a light-touch approach to crypto regulation over the next few months could make a multitrillion-dollar difference over the next few years. To understand how much we stand to lose as a result of bad blockchain policy, it’s first important to understand just how much we have gained as a result of good internet policy in the ’90s.

It’s easy to forget that the success of today’s internet behemoths was anything but certain in the early years of the tech boom. During the Dotcom Bubble of the late '90s, for example, many companies were dismissed as scams (and some of them were). But even the most promising companies were still seen as speculative bets, and their stock prices were subject to extreme volatility.

It’s also easy to forget that the very concept of the internet was foreign to most people in its early years. By today’s standards, it was slow, overly complex, and difficult to use by anyone without a strong technical background. Many dismissed the internet as a fad, including Nobel Prize-winning economist Paul Krugman, who made this prediction in 1998: “By 2005 or so, it will become clear that the internet’s impact on the economy has been no greater than the fax machine’s.”

Noted.

“A scam,” “a fad,” “a bubble,” “overly complex,” “too volatile.” Does any of this sound familiar? History doesn’t rhyme so much as it plagiarizes. And it’s impossible to ignore that the crypto skeptics of today use the same vocabulary as the internet naysayers of yesteryear.

Now imagine if U.S. policymakers had heeded the words of the internet’s critics in the mid-to-late ’90s. Imagine if they had cracked down on e-commerce, digital publishing, and fledgling social media platforms to preserve the old way of doing things. Imagine if they had shaped regulations to stem the free flow of physical goods, ideas, and information made possible by the internet.

The American people would have missed out on trillions of dollars in economic opportunity—and the bounties of the digital age would have gone to countries with more tech-friendly policies.

This is the risk we face today.

We find ourselves at the dawn of a new age of American innovation. Like the internet before it, crypto has the potential to redefine everything we know about how business, politics, media, finance, and even relationships work. But if legislators give in to crypto’s critics by taking a draconian approach to regulation, the U.S. will fail to reap the economic rewards of this world-changing technology—and entrepreneurs will flee to friendlier shores.

Even now, the stage is being set for a blockchain brain drain. Take the Senate-passed infrastructure bill, which includes a provision that would define crypto miners, validators, and even software developers as “brokers,” requiring them to report information to the IRS about anonymous blockchain participants that they would have no way of obtaining. In effect, this provision would kill the nascent DeFi (decentralized finance) industry and make it almost impossible for everyday Americans to invest in new cryptocurrencies. In other words, this latest move sends a hostile message to blockchain advocates: “We don’t want you here.”

At best, the Senate proposal belies a gross misunderstanding of how cryptocurrencies work; at worst, it exposes regulatory capture and the willingness of legislators to give in to special interests.

Sadly, the threat of bad regulation doesn’t end there. SEC Chair Gary Gensler has expressed his belief that many digital assets are not commodities but securities and should be regulated as such. Following this same logic, he’s signaled his intent to crack down on the use of stable coins—cryptocurrencies pegged to the value of the U.S. dollar. Americans are using stable coins to earn 4 to 8 percent APY on their savings through various lending programs. But the SEC wants to put a stop to these lending programs, ostensibly “to protect investors.” (What’s unclear is which government agency will protect investors from the unlimited money printing that is devaluing their dollar savings at a rate of 5.3 percent per year.)

Washington has gotten off on the wrong foot when it comes to crypto. But it’s not too late to correct course.

Regulation of crypto is not necessarily a bad thing. In fact, it’s a key step on the path to mainstream adoption. It’s critical, however, that policymakers shape regulation in a way that minimizes the risks of this new technology without eliminating its benefits. Congress found a way to do this with the internet in the ’90s. Section 230—while far from perfect and in need of reform today—paved the way for a flexible regulatory environment that allowed for many online companies to thrive. In the famous words of Jeff Kosseff, Section 230 contains “the 26 words that created the internet” (and, it’s worth adding, “trillions of dollars in economic wealth”).

Indeed, regulatory clarity is key to extracting maximum value from the emerging crypto economy, whether that value comes from DeFi protocols, decentralized forms of social media, tokenized assets, NFTs, or some other application of blockchain technology that we can’t even imagine today.

As policymakers seek to find the right balance on regulation, they should remember that the U.S. didn’t become the tech capital of the world by choking innovators with red tape. The U.S. became what it is today by taking a prudential approach to regulation—one that enabled the entrepreneurial spirit.

This is the same entrepreneurial spirit that inspired the private sector technological advances that made the Apollo moon landing possible. It’s the same spirit that brought about smartphones millions of times more powerful than the Apollo 11 guidance computers. And it’s the same spirit that has motivated a group of visionaries to push the boundaries of the digital frontier through blockchain technology.

Will Washington’s leaders stifle that spirit to the detriment of our economy and our reputation as a global leader in innovation? Or will they nourish that spirit to usher in the next chapter of the digital revolution?

Let’s hope they choose the latter.

#### SEC regulations are way more impactful than antitrust.

**Tucker 17** [Jeffrey A. Tucker, Editorial Director for the American Institute for Economic Research, he is the author of many thousands of articles in the scholarly and popular press and eight books in 5 languages, most recently The Market Loves You, “What Is the SEC Doing to Blockchain Technology?,” July 26, 2017, https://fee.org/articles/what-is-the-sec-doing-to-blockchain-technology/]

In case you haven't heard, the SEC has just issued a very strange warning/threat/edict to the effect that cryptoasset tokens of “distributed autonomous organizations” will be regulated like regular securities. The announcement casts doubt that these crypto-innovations are anything but deceptive ways to get around the law, so the SEC is provoked to say: we still matter, and all your fancy language about tokens and assets changes nothing.

For anyone in this industry, it is a strange thing to claim. It comes across like the Department of Agriculture's announcing that satellites will be regulated like livestock, or that math will be controlled under a law designed for vegetables.

However, the SEC also says that whether digital assets will be considered securities "will depend on the facts and circumstances, including the economic realities of the transaction." Only the SEC can say for sure.

The question is how narrowly or broadly will this regulatory threat apply. This is where the confusion begins. Does it apply narrowly only to the DAO case from last year, which was huge at the time but buggy and led to the Etherium fork? In other words, is this just the usual pretend excuse of consumer protection?

Or will it apply to every case of a token sale that uses blockchain technology? You can’t really tell from the language of the announcement, which is circuitous and merely suggestive amidst its faux-decisiveness. The SEC announcement on cryptoassets is ambiguous as a Papal encyclical issued under Pope Francis.

Maybe it is nothing serious, as the well-connected Coin Center hopes:

What the SEC did not say is that all tokens are securities. Rather, they suggest a facts and circumstances test but only analyze the facts and circumstances surrounding last year’s DAO token sale.

We believe that applying the same facts and circumstances test to other tokens will mean that some do not fit into the definition of securities, particularly tokens with an underlying utility rather than a mere speculative investment value.

The Blockchain Makes Peace and Prosperity Possible

Or perhaps someone in Washington truly believes that the most extraordinary technological innovation since the Internet can be made to work like the technology it is intended to replace. It’s like trying to make the lightbulb operate just like the whale-oil lamp. And actually it is not different from Ayn Rand’s tale of Anthem.

The market for cryptoassets is booming beyond belief, approaching the market capitalization of Ireland or Austria, all in a few short years. It’s because smart money is figuring out just what an amazing innovation blockchain is. It has taken nine years to fully dawn on people.

This is not really about Bitcoin as such, or even just monetary innovation, though there is that, and that in itself would be amazing enough. This is about a new and vastly improved path for human engagement itself: documenting claims, establishing ownership, communicating in a reliable way across the globe person to person, and establishing new rules for making peace and prosperity possible.

In the particular case of these “tokens” or “coins,” they do not operate like securities, which are ownership shares in the profits and interest of particular companies. These crypto tokens are vessels for valuing the authority to access ledgers that power human services. They come and go, as with any other market. Yes, people lose their shirts in this market, and others get rich. This is part of the exploratory process that is embedded in market evolution, particularly in these early days.

The market must be allowed to work at warp speed! As for the many, many pump-and-dumps, scams, and silly claims in deceptive white papers, there is just no way for government to police all this. The market is too new and active. These markets regulate themselves. Also: consumer beware!

There are plenty of legitimate companies in this sector now, many built on the platform that the SEC seems to disrespect. Even government agencies have contracted with them to provide services that are otherwise unavailable.

Also, these token sales help raise capital for new ventures, precisely because they are unregulated on platforms that have never existed before in human history. They have come along at a time when VC and bank funding have dried up, and when the practice of going public on regulated exchanges has become the privilege of a few. Everyone but the most highly capitalized has been shut out. Cryptoasset markets are free, which is why they are unleashing an amazing amount of creative and wealth-creating energy.

A Good Idea Cannot By Killed Bureaucracy

The SEC seems inclined literally to stop the progress of history, with old world coercion, as if mere announcements from bureaucrats will shape the world and the pace of social evolution in the long run. If this is serious, and if the bureaucracy follows through, it could be the most devastating economic regulation of our lifetimes.

However, there is the short run and the long run. Perhaps in the short run, this news could have a chilling effect on the market, or worse. Or maybe it is all just bluster.

The markets have so far sent mixed signals on the announcement. They are generally down across the board, but not nearly as much as you might expect from an existential threat. It seems like there are many buyers in the space right now, hoping for bargains.

In the long run, there is nothing that can stop a good idea from triumphing over reactionary attempts to stop it. That’s because ideas are portable and live on a metaphorical distributed ledger themselves, one that long pre-exists the blockchain. A good idea cannot be killed by mere bureaucracy.

There is also the matter of geography and borders, which thankfully still restrain the state to some extent. Intellectual and digital capital fly to where they are loved and not bludgeoned. The United States could become the world haven for great innovation, but not with these kinds of actions from the SEC (but you could substitute any bureaucracy in for those letters).

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

#### Modelling internal link card is a Medium article by a Partner at Blockchain Coinvestors Acquition Corp… Biased would be an understatement.

#### No chance autocratic countries model US blockchain standards

### 1NC---AT: Bitcoin !

#### Current Bitcoin is sufficient---no warrant why expansion is key AND this impact is ridiculous

### 1NC---AT: Bees !

#### No impact to honeybee dieoff—it ensures native pollinators fill in

Moisset, 14—Ph.D., biologist specializing in pollinators (Beatriz, “Will We all Die if Honey Bees Disappear?,” <http://nativeplantwildlifegarden.com/will-we-all-die-if-honey-bees-disappear>, dml)

Bumble bees have been pollinating sunflowers, an important crop for Native Americans, long before the arrival of the honey bee

One third of our food needs to be pollinated by insects. Honey bees are responsible for most of it. With 4,000 species of bees in North America plus numerous other pollinators of different stripes, how did we manage to become so dependent on just a single species? We know how important it is to diversify our portfolio, our diet, and our crops and gardens. So, what were we thinking?

We hear constant bad news about the situation of the honey bee. Their populations have been dwindling for the past fifty years. They took a sharper dip in the 1980s with the introduction of the varroa mite and a second sharp drop in the past few years with what came to be known as Colony Collapse Disorder. What would happen if all honey bees were to disappear from North America? Is it true that fruits and vegetables would disappear from supermarkets? Is it possible that we would all be dead in a few years?

Let us remember that there were no honey bees in this continent a few hundred years ago. Native Americans ate a healthy diet which included squash and beans, sunflower seeds, chestnuts and a variety of berries, all of them pollinated by native bees. More recently, small farms and vegetable gardens still could obtain enough pollination services without managed bee hives.

Present day farming or agribusiness, with its enormous monoculture fields, requires managed pollinators: hives with large numbers of workers that can be trucked long distances and moved from crop to crop as the seasons progress.

If all honey bees disappeared, it would be catastrophic for agriculture, as we know it, and we would certainly suffer grievously, but we would survive. Nevertheless, over time, other pollinators could, and would, take over all the tasks that the Jack-of-all-trades performs today. This would require profound changes in agriculture to meet these pollinators’ needs such as nesting habitat, diversity of crops, protection from pesticides and more. Fortunately, several groups of pollination experts are already exploring this issue and coming with alternatives.

The flowers of almonds, apples and cherries, as well as those of native crab apples and wild cherries are enthusiastically visited by native and non-native bees alike. The alfalfa leaf cutter bee and the alkali bee do a better job than honey bees at pollinating alfalfa. Wild bees are far superior to honey bees at pollinating the native blueberries and cranberries. Nonetheless, beehives are used for the pollination of these crops because honey bees compensate in numbers what they lack in finesse.

Would we all die if honey bees disappeared overnight? The answer is an emphatic no. Would the environment benefit from the changes imposed in agriculture? My guess is yes. What is yours?

Do native plant gardens, nature centers or wildflower preserves need honey bees? No, they do not. Native plants and local ecosystems need native pollinators. Bring them all, the shiny metallic ones, the fuzzy fat bumble bees, the leaf cutters, and the long horned ones, the ground nesters and those that prefer hollow tubes. Bring in the generalists and also the specialists, like the azalea bee, the spring beauty Andrena, the trout lily Andrena, the blueberry bee and the squash bee. We want the ones that are active briefly in early spring or in the summer and fall, and also the long lived ones that stick around through the seasons. Finally, let us not forget the flies, wasps, moths and all the others. The native plant garden needs them all and benefits from this wealth of species.

### 2NC---A/C

#### SEC regulation thumps.

Osorio et al. 18 [Ivan Osorio, ed., editorial director at the Competitive Enterprise Institute since 2002, his work has been published in Forbes, The Freeman, and The American Spectator; prior to working with CEI, Osorio worked at the Capital Research Center, Georgetown University Press and University Press of Florida. He holds two degrees from the University of Florida, including a Masters in Latin American History. “Free to Prosper: A Pro-Growth Agenda for the 116th Congress,” Competitive Enterprise Institute, 2018]

Increasingly, crowdfunding has come to rely on offerings of new cryptocurrency— sometimes called “initial coin offering”—to fund new business ventures. In rewardbased crowdfunding, funders receive products such as t-shirts or a sample of the item produced. In equity-based crowdfunding, by contrast, the funders are investors who receive a share in the business or a note with a promised rate of return. Even though digital coins may grow in value more than do t-shirts, which often are the rewards for crowdfunding offerings for movies and recordings, those offerings fall into the rewards-based crowdfunding category, as they do not offer funders either a share of the company or a promised return on investment. Yet the SEC, without congressional authority, is increasingly claiming jurisdiction by labeling digital currency products as “securities.” Such overreach from the SEC, and the threat of overregulation from other agencies, could chill innovation in this sector and related development in improving blockchain-distributed ledger technology that holds promise in everything from health care to land titling. Cryptocurrency creators could suddenly become subject to the thickets of red tape that face public companies, such as the mandates of Sarbanes-Oxley and Dodd-Frank. Securities registration rules could also prove highly impractical for blockchain technology if, for instance, nowanonymous individuals who maintain the blockchain have to register as investors or securities issuers. Peer-to-peer lending has expanded credit options for consumers and small businesses, but its growth has been limited by the SEC’s interpretation of 1930s-era securities laws. The SEC treats peer-to-peer loans as securities that must be subject to much of the same red tape as a stock or bond offering. As a result, two large companies, Prosper and Lending Club, have a virtual duopoly on peer-to-peer lending for consumers. And, unlike in other countries, there is almost no peer-to-peer lending by ordinary investors to small businesses. The SEC is one of several regulatory agencies vying—or being pushed—to regulate Bitcoin, Ethereum, and dozens of new cryptocurrencies, which offer benefits from currency hedging to faster payments. Such new payment technologies may also be stifled by Dodd-Frank’s Durbin Amendment, which puts price controls on what debit card issuers can charge the retailers for whom they process payments. According to George Mason University law professor Todd Zywicki and other researchers, the Durbin Amendment may have already caused as many as 1 million consumers to lose access to banking services, as the price controls shifted debit card costs from the nation’s biggest retailers to its poorest consumers. If regulators treat new payment methods such as Apple Pay as electronic “debit cards,” innovation benefiting consumers and retailers will be stifled. Even with the advent of financial technology, or FinTech, some consumers and providers will always value personalized service. Whether to use automated or personal service should be a choice, not a mandate. The Department of Labor’s fiduciary rule mandated that financial professionals serve savers’ “best interests”—as defined by DOL. That rule threatened to impose so many costly mandates on brokers and insurance agents that it would have made it cost-prohibitive for them to work with middle- and low-income savers, who would have been be stuck with untested “robo-advice” as a result of this flawed regulation. Fortunately, in 2018, the Fifth Circuit Court of Appeals threw out the DOL rule as “arbitrary and capricious,” and the Trump administration declined to appeal. Congress should make sure that the Department of Labor and other agencies, such as the SEC, do not promulgate new rules that similarly raise costs and reduce choices for middle-class investors. Experts: John Berlau, Iain Murray

#### State regulations thump.

Desouza et al. 18 (Kevin C. Desouza, Nonresident Senior Fellow @ Brookings Governance Studies Program and Center for Technology Innovation; Chen Ye, Associate Professor of Management Information Systems @ Purdue University Northwest; Kiran Kabtta Somvanshi, Visiting Fellow @ IBM Center for Business of Government; “Blockchain and U.S. state governments: An initial assessment,” 04/17/18, Brookings, <https://www.brookings.edu/blog/techtank/2018/04/17/blockchain-and-u-s-state-governments-an-initial-assessment/>, GBN-TM)

Blockchain is no longer just a tool to mine cryptocurrencies or manage databases. Now U.S. state governments have recognized the technology’s potential for the delivery of public services, and are at various stages of implementation. For blockchain to emerge as the technological imperative for public services, states will have to change existing regulations. They must address concerns about scalability, the difficulty of removing and editing data once uploaded, and investment in the new technology. BLOCKCHAIN’S APPEAL The defining characteristic of a blockchain is its decentralized verification system. Once a transaction is committed to the blockchain, the record cannot be easily reverted by a single stakeholder, regardless of their social, economic, and political power. Second-generation blockchains such as Ethereum have also introduced a feature called “smart contracts”—software code stored on the blockchain that will execute a transaction automatically when certain conditions are met.

### IOT---Impact T---1NC

#### IoT fails and causes catastrophic accidents

Muñoz et al. 15 — Luis Muñoz, Professor of Computer Science and Network Planning at the University of Cantabria, and Chema Alonso, Head of Cybersecurity for Telefónica — a global communications firm, Ph.D. in Computer Science from the University of Madrid, and Antonio Guzmán, Scientific Director for Telefónica, Ph.D. in Computer Engineering from the University of Madrid, and Belisario Contreras, Cyber Security Program Manager at the Inter-American Committee against Terrorism (CICTE) at the Organization of American States, and John Moor, Director of the IoT Security Foundation, and Andrey Nikishin, Special Project Director of Future Technologies at Kaspersky Lab — a global anti-virus corporation, and Bertrand Ramé, Director of Networks and Operators at SIGFOX — a global telecommunication company mainly based in Latin America, Jaime Sanz, Technical Account Manager at Intel Corporation, 2015 (“Scope, scale and risk like never before: Securing the Internet of Things,” *Telefónica,* October, Accessible Online at <https://www.telefonica.com/documents/737979/5540857/Telef%C3%B3nica_Security_IoT_Final.pdf/a28293d4-f15a-4f21-8353-317faf892a18>, Accessed On 02-06-2016)

The networks IoT creates will be some of the biggest the world has ever seen, making them enormously valuable to attackers.

By the measure of Metcalfe’s Law, the value of IoT networks is massive, making them significant targets for attackers motivated by greed or political cause. Yet, if IoT represents a difficult security task now, as the number of networks, operators, consumers and devices spirals, so does the risk of a successful breach.

Part of the problem is scale; the sheer number of devices, networks, applications, platforms and actors creates a wicked problem that will only grow in complexity as the infrastructure to support, serve and extract value from the IoT grows.

The intentions of designers – who prioritise safety over security, as we have seen earlier – may also create a problem.

“We have to sacrifice the heterogeneity of devices for the ability to control and secure them,” says Telefónica’s ElevenPaths’ Guzmán. “The security layer of IoT must contemplate protection systems at all levels – network layer, application layer and IT devices.”

Managing vulnerabilities and responding to attacks or breaches is something The networks IoT creates will be some of the biggest the world has ever seen, making them enormously valuable to attackers. Securing the Internet of Things – before and after\_ that’s possible now because of the relatively limited number and scope of IoT devices. Getting the security, reporting and resolution processes in place for internet connected devices before the first catastrophic attack will be absolutely vital.

Recent proofs of concept, such as the breach of Chrysler’s security on 1.4 million Jeeps that could be updated over the air and remotely controlled by a malicious attacker, demonstrates the potential problems around connecting IoT devices to networks.

It’s also worth considering an attack may not be necessary to force change. An accident, inadvertent slip or honest mistake could also be catastrophic – we can go back as far as the 1988 Morris Worm for an example. While scale and variety could well help prevent significant damage, it’s still the case that the pace of development, scale and growth of IoT enables far more potentially damaging outcomes than seen before in more traditional computing environments.

# 2NC---Fullertown R5

## Sec 5 CP

### 2NC---O/V

### 2NC---Solvency---Blockchain

#### The CP solves --- no rollback

Bauer 20 --- Ben Bauer, Senior U.S. Antitrust & Foreign Investment Associate, New York, “When it comes to blockchain, don’t be a blockhead”, Feb 5th 2020, https://www.linklaters.com/en-us/insights/blogs/linkingcompetition/2020/february/when-it-comes-to-blockchain-dont-be-a-blockhead

For years, blockchain technology has been heralded for its potential to transform industries and create business efficiencies, with potential applications ranging from supply chain management, to food provenance, so-called cryptocurrencies and beyond. Because blockchains are, in essence, multi-party databases, many such applications depend on multiple parties (often competitors) collaborating, contributing, or accessing shared digital commercial information. As a result, the use of blockchain technology raises potential antitrust concerns and is likely to come under increased scrutiny from competition enforcers around the world. Recent events in the shipping industry illustrate this point.

Blockchain is a record-keeping technology in which pieces of digital information, such as transaction details with dates, times and sales amounts (“blocks”), are linked in a decentralised database using cryptography (“chain”). There is no monolithic blockchain. Blockchains vary and differ in the degree of access and management rights provided to their users. Public blockchains, such as the Bitcoin blockchain, can be accessed and contributed to by anyone. By contrast, private blockchains allow only for the participation of selected members, who are authorised by the blockchain’s “owner”. Permissioned blockchains, a type of public/private hybrid, allow for more customisation of the activities each participant can execute on the blockchain. For example, some participants may be restricted to read-only while others may be permitted write-access.

Focus on “Co-opetition”: Blockchain collaborations and consortia transforming supply chains

Many businesses involve complex supply chains that frequently experience problems like manufacturing delays and shipping/tracking problems. To help manage these issues, companies are exploring the possibility of efficient collaborations using blockchain technology. In the shipping industry companies are exploring whether blockchain’s use may streamline global maritime trade, an industry worth an estimated USD 12 trillion.

Maersk GTD Inc. and International Business Machines Corporation are working to create a blockchain shipping information platform called TradeLens. TradeLens participants include container liners, port authorities, terminal operators, and customs agencies. Last month, a number of competing shipping companies filed a proposed Working Agreement with the Federal Maritime Commission (FMC) for their participation in TradeLens. The Working Agreement would permit the shipping companies to co-ordinate and agree on the types of data they would provide to the TradeLens platform as well as various terms concerning the use of such data.

The Working Agreement references the antitrust immunity available to the shipping companies for these activities under the U.S. Shipping Act. And it also states that the parties’ activities would be implemented consistent with applicable laws, including European antitrust law and its prohibition of anticompetitive agreements. The Agreement specifically prohibits the parties from discussing competitively sensitive information, such as vessel capacity, shipping rates, and customer terms and conditions. The Agreement will enter into force after 6 February 2020 unless the FMC rejects it.

Antitrust implications

The TradeLens platform arises in the unique context of maritime shipping, which has been the subject of multiple antitrust investigations and civil actions in recent years. Any company considering a blockchain collaboration or participating in a consortium must exercise vigilance concerning the related antitrust concerns and potential liabilities. These include:

Illegal Co-ordination: Companies must ensure that the blockchain collaboration, including the provision of data, does not become a means for illegal co-ordination such as price fixing, customer or market allocation, or bid rigging. Such violations are pursued aggressively by U.S. and EU enforcers and can be punished with stiff penalties, including fines, potential damages claims from aggrieved private parties, and in some jurisdictions, jail time for implicated individuals.

Companies should impose strict policies concerning permissible activities under a blockchain consortium or other collaboration and monitor compliance on an ongoing basis.

Exchange of competitively sensitive information: Given the potentially open and transparent nature of distributed ledger technology, it is important to ensure that a blockchain is not designed in a manner which facilitates the sharing of competitively sensitive information. Sharing competitively sensitive information, such as unaggregated pricing or other customer terms, with competitors may violate Section 5 of the Federal Trade Commission Act. The FTC can stop such information flows by pursuing injunctive relief and assessing civil penalties. In Europe, the exchange of competitively sensitive information is sometimes considered as a hardcore restriction and is presumed illegal. The European Commission can impose substantial fines on companies that violate this prohibition. In addition, improper information exchange can facilitate illegal co-ordination, as discussed above.

Companies can manage these risks by putting in place appropriate safeguards limiting the scope of the information disclosed, as well as the recipients of such information.

#### The evidentiary findings for the rulemaking create a public record supporting the plan---this results in judicial uptake.

Joshua D. Wright 13, Commissioner, Federal Trade Commission, “Section 5 Recast: Defining the Federal Trade Commission’s Unfair Methods of Competition Authority,” Executive Committee Meeting of the New York State Bar Association’s Antitrust Section, 6/19/13, https://www.ftc.gov/sites/default/files/documents/public\_statements/section-5-recast-defining-federal-trade-commissions-unfair-methods-competition-authority/130619section5recast.pdf

II. WHY IS A SECTION 5 POLICY STATEMENT NECESSARY?

There are at least two principal reasons for issuing a policy statement regarding the Commission’s unfair methods of competition authority. The first is that the ambiguity associated with the current state of the Commission’s application of its unfair methods of competition authority can lead to overbroad enforcement that creates uncertainty in the business community about the legality of various types of business conduct. This uncertainty potentially has grave consequence for our nation’s economy because it inevitably deters some firms from engaging in efficiency‐enhancing conduct for fear that that the conduct may draw the ire of the Commission. The second reason is that, in mapping out the Commission’s institutional blueprint, Congress envisioned that Section 5 would play a key role in the Commission’s mission by leveraging its unique research and reporting functions to develop evidence‐based competition policy. This promise has remained largely unfulfilled, in part because the Commission has failed to articulate a coherent framework for applying its unfair methods of competition authority. I will briefly discuss each of these concerns in turn.

a. Uncertainty in the Business Community

In the absence of any meaningful limiting principle distinguishing lawful conduct from unlawful conduct under Section 5, the breadth of the Commission’s authority to prosecute unfair methods of competition creates significant uncertainty among members of the business community. Without a policy statement that clearly articulates how the Commission will apply its Section 5 authority, businesses must make difficult decisions about whether the conduct they wish to engage in will trigger a Commission investigation or worse. Such uncertainty inevitably results in the chilling of some legitimate business conduct that would otherwise have enhanced consumer welfare but for the firm’s fear that the Commission might intervene and the attendant consequences of that intervention. Those fears would be of little consequence if the Commission’s Section 5 authority was clearly defined and business firms could plan their affairs to steer clear of its boundaries.

In practice, however, the scope of the Commission’s Section 5 authority today is as broad or as narrow as a majority of the commissioners believes that it is. This lack of institutional commitment to a stable definition of an unfair method of competition leads to at least two sources of problematic variation in Section 5 interpretation by the agency. One is that an agency’s interpretation of the statute in different decisions need not be consistent even when the individual commissioners remain constant. Another is that as the members of the Commission change over time, so does the agency’s Section 5 enforcement policy, leading to wide variation in how the Commission prosecutes unfair methods of competition. These two sources of variation give firms little if any ability to plan long‐term strategies that may involve conduct that one commission might consider permissible while another commission might find offensive. Thus, it should come as no surprise that even when a commissioner articulates his or her position on the scope of Section 5, that position provides little reassurance to the business community. Take for instance the position offered by one commissioner who several years ago stated that conduct can constitute an unfair method of competition when it includes “actions that are collusive, coercive, predatory, restrictive, or deceitful, or other‐wise oppressive, and does so without a justification that is grounded in legitimate, independent self‐ interest.”12 I do not know any antitrust practitioners who would have felt comfortable providing guidance to clients on how to avoid the “otherwise‐oppressive” prong of an unfair method claim.

The uncertainty surrounding the scope of Section 5 is exacerbated by the administrative procedures available to the Commission for litigating unfair methods claims. This combination gives the Commission the ability to, in some cases, take advantage of the uncertainty surrounding Section 5 by challenging conduct as an unfair method of competition and eliciting a settlement even though the conduct in question very likely would not violate the traditional federal antitrust laws. This is because firms typically will prefer to settle a Section 5 claim rather than going through lengthy and costly administrative litigation in which they are both shooting at a moving target and have the chips stacked against them. Such settlements only perpetuate the uncertainty that exists as a result of ambiguity associated with the Commission’s Section 5 authority by encouraging a process by which the contours of the Commission’s unfair methods of competition authority are drawn without any meaningful adversarial proceeding or substantive analysis of the Commission’s authority.

Critics have offered at least two rejoinders in response to claims that the uncertainty surrounding Section 5 may chill legitimate business conduct. The first is that the courts have provided sufficient guidance on the scope of Section 5 to alleviate concerns about its imprecise boundaries.13 The second is that they claim the Commission has used Section 5 very judiciously and only in appropriate circumstances.14 Neither argument is particularly compelling. On the first point, although the Supreme Court has decided a handful of cases in which it examined the scope of the Commission’s authority under Section 5, no court has set out the elements necessary to challenge conduct that falls outside the traditional federal antitrust laws. Moreover, the Supreme Court has not examined the breadth of Section 5 in nearly four decades. This suggests that a policy statement actually is more important today in light of dramatic changes in antitrust jurisprudence since the Supreme Court last considered the Commission’s authority under Section 5.15 Quite a bit has happened within antitrust jurisprudence during this timeframe. The Supreme Court has issued nearly one hundred antitrust decisions since 1972 that can be explained in large part by a move toward bringing modern antitrust law in line with economic thinking.16 No serious antitrust scholar argues that merger law would better serve consumers by relying exclusively upon the language in Brown Shoe,17 Von’s Grocery,18 and Pabst Brewing19 rather than the updated economic thinking provided by the Horizontal Merger Guidelines.20 Similarly, court decisions from the early 1970s are not a serious argument against providing agency guidance on Section 5; rather, they are evidence demonstrating the need for it.

With respect to the second point, the naked assertion that the Commission only uses Section 5 judiciously, and only in appropriate circumstances, provides very little comfort to a firm who must guess how any particular Commission will apply its unfair methods of competition authority to the firm’s business practices, whether that Commission’s views will remain consistent, or whether the views of any particular Commission will survive a change in membership. Take for example the position articulated by one FTC Chairman just over three decades ago who said “no responsive competition policy can neglect the social and environmental harms produced as by‐ products of the marketplace: resource depletion, energy waste, environmental contamination, worker alienation, the psychological and social consequences of producer‐stimulated demands.”21 Now, I do not think that any of my colleagues would endorse such an expansive use of Section 5, but the point is that under the current state of affairs where the Commission has not committed itself to a coherent operational framework, what the Commission’s Section 5 enforcement looks like can vary dramatically from commissioner to commissioner, and commission to commission. No amount of pointing to recent cases as examples of the Commission’s “judicious” and “responsible” use of Section 5 and no number of commissioner speeches—including this one—can be counted upon to supply businesses with the information they require to ensure that they do not violate the statute.

b. Leveraging Institutional Advantages to Steer Competition Policy

The second reason for issuing a policy statement with respect to the Commission’s unfair methods of competition authority is that Congress intended Section 5 to play a key role in the Commission’s competition mission.22 Specifically, Congress intended for the Commission to use Section 5 to reach business conduct outside the scope of the traditional federal antitrust laws. A key rationale for creating a competition statute that reaches behavior not otherwise unlawful under the Sherman Act and Clayton Act is that the Commission, as an expert administrative tribunal, could interpret its operative statute in a manner that is flexible to changes in the marketplace and capable of expanding beyond current judicial interpretations. In order to expand beyond current judicial interpretations, Congress authorized the Commission not only to bring enforcement actions, but also to conduct studies of business practices in order to understand their competitive implications.23 These institutional design features were intentional and were undertaken with the hope that, as former Chairman Bill Kovacic and Marc Winerman have described, Section 5 would “help make the Commission the preeminent vehicle for setting competition policy in the United States.”24

Specifically, the Commission’s unique policy authority would allow competition policy research and development that would complement the agency’s enforcement mission and guide commissioners in identifying the appropriate standards of liability. Ultimately, “courts would eventually look to the Commission for guidance about how to frame and apply antitrust rules.”25 The combination of these institutional design features and expertise would generate sound competition rules and reliable guidance for the business community. This promise, however, has remained largely unfulfilled.26 In fact, the evidence suggests that the Commission’s use of Section 5 has done very little to influence antitrust doctrine and even less to inform judicial thinking or to provide guidance to the business community. In my view, this is in large part because the Commission has failed to articulate a coherent framework for the application of Section 5.

#### It’s a warning shot that spurs Sherman Act enforcement.

William E. Kovacic & Mark Winerman 10, William Kovacic is a Commissioner with the Federal Trade Commission and Professor at the George Washington University Law School (on leave); Marc Winerman is an Attorney Advisor to Commissioner Kovacic, “Competition Policy and the Application of Section 5 of the Federal Trade Commission Act,” 20 Minn. J. Int'l L. 274, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1783&context=faculty\_publications

One possibility is to develop a rationale for what Former Commissioner Tom Leary calls “frontier” cases,83 which announce a new principle that could apply under Section 2, but which is ready only for Section 5 prospective enforcement but not the prime time of Section 1 or 2. In a frontier case, the Commission would presumably find (and a reviewing court would presumably affirm) all the elements of a Sherman Act violation; the difference between Section 5 and the Sherman Act would be inherently transitory. The logic here would be that the Commission’s institutional expertise provides a basis to announce a legal principle and impose equitable relief at the outset; then, once the principle is announced, its subsequent application could be entrusted to Sherman Act enforcement with the accompanying treble damages. The challenge to this approach, though, is to make it work in practice: for a court to announce a decision under Section 5 without providing a precedent for a plaintiff to use when it seeks to persuade a different court to impose treble damages for prior conduct.84

### 2NC---AT: Rollback

#### It’s a prototypical Chevron case. Courts would apply deference and uphold the rule.

Justin (Gus) Hurwitz 14, Assistant Professor of Law, University of Nebraska College of Law, “Chevron and the Limits of Administrative Antitrust,” University of Pittsburgh Law Review, vol. 76, no. 2, 2, 2014, lawreview.law.pitt.edu, doi:10.5195/lawreview.2014.324

A. Section 5 is Precisely the Sort of Statute to Which Chevron Applies

As a threshold matter, Section 5 is precisely the sort of statute to which Chevron deference is meant to apply.167 At a mechanical level, Chevron instructs courts to first ask whether the meaning of the statute is clear.168 Both “unfair methods of competition” and “unfair or deceptive acts or practices” are inherently ambiguous; courts need not turn to historical documents to determine whether a specific meaning was intended by Congress or whether Congress clearly intended to delegate interpretive authority to the FTC. Nearly every word of the statute is rife with ambiguity: What is unfair? Unfair to whom? What is deceptive? What is a method? An act? A practice? What is competition? As the Court has noted, the standard is “by necessity, an elusive one.”169

Absent clarifying language in the statute itself, or in some cases references outside the statute that indicate contrary congressional intent,170 the ambiguity inherent in the language of Section 5 is sufficient to trigger Chevron deference. The sole task of the courts is—or should be—to ensure that, whatever construction the FTC gives to Section 5, that construction is permissible within the boundaries of the statute.171

The argument for deference is even stronger when we consider outside references. The statutory history has consistently demonstrated a congressional intent to grant the FTC broad discretion to define the scope of Section 5 and, in particular, that the scope of Section 5 is broader than that of the antitrust laws.172 Section 5 was enacted in response to concerns that the courts had interpreted the antitrust laws too narrowly;173 it was deliberately drafted with language that had not previously been considered by the courts.174 When the Court imposed an overly narrow construction on the statute in the 1950s, Congress amended the statute to overcome that narrowing interpretation.175

Section 5 is, thus, a case study in each of the four rationales for Chevron deference:176 congressional intent; agency expertise; concern about the courts’ limited political accountability as compared to Congress and its agencies; and the separation of powers—all of which urge deference to the FTC’s interpretation of Section 5. It is hard to imagine a statute better suited to Chevron deference than Section 5.

#### Text, precedent, and history all agree.

Royce Zeisler 14, J.D. Candidate 2014, Columbia Law School; B.S., B.A. 2012, University of British Columbia, “Chevron Deference and the FTC: How and Why the FTC Should Use Chevron to Improve Antitrust Enforcement Note,” Columbia Business Law Review, vol. 2014, no. 1, 2014, pp. 266–312

As the plain text of the statute, Court precedent, and legislative history all reveal, section 5 grants the FTC authority to issue interpretations worthy of Chevron deference. First, consider the text of the entire FTC Act. Congress paralleled the novel ICC structure so that the FTC would become a norm-creator. The legislative history confirms this understanding: Congress did not trust the courts to interpret antitrust law. 10 9 Currently, courts recognize this norm-creating power by granting Chevron deference to the FTC's section 5 consumer protection interpretations.1"0 The FTC's claim to deference in antitrust matters is as strong as, or stronger than, in consumer protection matters, because antitrust was the FTC's original delegation.' Similarly, the modern FTC has unequivocal authority to promulgate rules. This lawmaking power alone is enough for courts to find that the application of the Chevron framework is warranted.

#### The rulemaking process aggregates information to justify the CP which courts would not second-guess.

C. Scott Hemphill 9, Associate Professor and Milton Handler Fellow, Columbia Law School, “An Aggregate Approach to Antitrust: Using New Data and Rulemaking to Preserve Drug Competition,” SSRN Scholarly Paper, ID 1356530, Social Science Research Network, 2009, papers.ssrn.com, <https://papers.ssrn.com/abstract=1356530>

Rulemaking is not the only way to shift substantive policymaking authority from courts to the FTC. The FTC can bring individual cases through agency adjudication,207 reviewed in a court of appeals of a respondent’s choosing,208 or directly in an action in district court. The FTC has taken both routes in attacking settlements. The agency adjudication route resulted in an appeals court loss; two cases in district court are pending.

Rulemaking has significant, familiar advantages over the adjudicatory route. Rulemaking permits affected parties to test aggregate data in an open way, with ample opportunity for rebuttal.209 The opportunity for input and testing tends to produce superior policy.210 The resulting rule thus has a superior claim to judicial deference, compared to judicial review of a single case: The rule has been thoroughly vetted under notice and comment, after a broad, deep review of the full terrain of behavior by regulated parties. It is this superior breadth and greater vetting, rather than the doctrinal force of Chevron itself,211 that presents the strongest reason to think that a rule might succeed where adjudication has failed.

#### More warrants:

#### 1) EMPIRICS---only actual rule from this time period ultimately survived in its entirety.

C. Scott Hemphill 9, Associate Professor and Milton Handler Fellow, Columbia Law School, “An Aggregate Approach to Antitrust: Using New Data and Rulemaking to Preserve Drug Competition,” SSRN Scholarly Paper, ID 1356530, Social Science Research Network, 2009, papers.ssrn.com, <https://papers.ssrn.com/abstract=1356530>

Rulemaking has a further effect: It attracts congressional attention to an important policy issue where adjudication may not. The FTC’s first controversial foray into rulemaking was the Cigarette Rule,213 a consumer protection rule promulgated in 1964 that governed the advertising and labeling of cigarettes. One powerful effect of the rule was to focus Congress on the question, in part because the industry argued that the FTC had usurped congressional prerogatives. The rule was withdrawn the following year, replaced by a watered-down statute.214

A modern antitrust rule might be expected to create a similar provocation. Whether that is an argument in favor of rulemaking is less certain. In the case of cigarette regulation, congressional action preempted the FTC’s rule in key respects.215 However, the FTC stayed deeply engaged in congressional debates on the issue, and played an important role in promoting further statutory change.216 [FOOTNOTE 216 BEGINS] 216. For an account of these changes, see Sidney M. Milkis, The Federal Trade Commission and Consumer Protection: Regulatory Change and Administrative Pragmatism, 72 Antitrust L.J. 911, 918–19 (2005) (“Eight years after Congress rejected the FTC’s regulation of cigarette advertising the agency’s policies were adopted in their entirety.”). [FOOTNOTE 216 ENDS] Increased congressional attention might therefore be regarded as a modest positive overall, or at least not a negative.

#### 2) LIMITED PENALTIES---businesses would rather have the CP than risk treble damages.

Jon Leibowitz 8, FTC Commissioner, ““Tales from the Crypt” Episodes ’08 and ’09: The Return of Section 5,” Section 5 Workshop, 10/17/8, https://www.ftc.gov/sites/default/files/documents/public\_events/section-5-ftc-act-competition-statute/jleibowitz.pdf

Practical Checks on Section 5 Cases

Finally, lest anyone panic, there are other practical checks on FTC Section 5 authority, which are probably underappreciated by those who do not actually work at the agency, like the relatively narrow array of remedies afforded to us.

• Unlike the Byzantine Emperor Zeno (who ruled from 476 to 491 A.D.), the FTC does not have the authority to send monopolists into perpetual exile or order the forfeiture of all of their assets.

• Unlike the Department of Justice, which can put violators in prison, the Commission is generally only able to get injunctive relief for violations of Section 5, at least in cases brought before Commission ALJs. These outcomes are appealable, of course. And our ability to seek restitution or disgorgement is limited to the federal courts from the start, and subject to our internal policy of not pursuing monetary relief except in cases of clear violations.

• Far more importantly, unlike in most government antitrust cases, Section 5 violators do not find themselves subject to private antitrust actions under federal law— and probably under state baby FTC acts as well— certainly not for treble damages.20

For this reason alone, the business community should embrace our use of Section 5.

In time, I believe it will.

### 2NC---AT: Congress Backlash

#### 1) POLITICAL SHIFTS---Section 5’s become popular. We live in the era of the viable Sanders candidacy and the bipartisan antitrust consensus. This isn’t the 1970s!

Sandeep Vaheesan 17, Regulations Counsel, Consumer Financial Protections Bureau, “Resurrecting “A Comprehensive Charter of Economic Liberty”: The Latent Power of the Federal Trade Commission,” University of Pennsylvania Journal of Business Law, Vol. 19, Iss. 3, pp 645-699

Yet, these political risks do not call for resignation and indefinite inaction. Just as the power of corporate interests in American society cannot be dismissed, the changing political dynamics in the United States should also not be discounted. Forty years of income stagnation and a dramatic rise in inequality have brought the merits of existing political economic arrangements, including weakened antitrust,258 into doubt.259 At a 2016 Senate antitrust oversight hearing, Democrats and Republicans raised concern over inadequate antitrust enforcement.260 Even Senator Mike Lee, a hardline conservative from Utah, questioned the effectiveness of current merger policy.261 Senator Bernie Sanders, a self-described democratic socialist, championed economic populism and a revival of the New Deal and won twenty-two states in his campaign to be the Democratic nominee for president—a campaign that seemed quixotic just a year ago.262 The Democratic Party now has a faction that seeks to challenge the status quo across a number of areas,263 including antitrust.264 Public concerns about the power of corporations are being reported in the mainstream press again, after years of neglect.265 Even President Trump has raised concerns about corporate mergers and monopolies,266 though it seems unlikely he will act in any systematic fashion.267

The Federal Communications Commission’s (“FCC”) rule to impose non-discrimination and no-blocking requirements on broadband providers (popularly known as “net neutrality”)268 offers lessons on how the FTC could proceed. The FCC’s campaign to establish net neutrality challenged some of the most powerful corporations in the country and involved judicial setbacks and multiple policy reversals.269

The FCC succeeded in large measure because of the political support for net neutrality. Activists and advocates effectively conveyed the importance of net neutrality to the broader population and tailored their message to different communities.270 Businesses that stood to lose from the exclusionary practices of broadband providers also played an important role in championing net neutrality.271 Furthermore, the FCC enjoyed key support in Washington, with President Obama272 and a number of Representatives and Senators273 calling for strong net neutrality rules.274 The groundswell of public support, reflected in the 4 million mostly supportive comments that were submitted to the FCC,275 and pressure from high-profile political figures persuaded the FCC to take a strong approach and surely steeled its political will.

Political and public support for a broad Section 5 is essential. If the FTC were to proceed without strong public support and backing from the White House and progressive factions in Congress, it would face long odds of success. One agency alone, regardless of its determination, cannot stand up to the power of big business.

If, however, the FTC can draw on and reinforce public support and count on the White House and Congress to champion its efforts, it has a much better chance of overcoming powerful opposition. Activists and advocates who support open, competitive markets would have to play a principal role in explaining the significance of Section 5 to the public. As the net neutrality episode shows, skilled advocates can explain and demonstrate the significance of arcane issues such as telecommunications policy to a lay audience. Antitrust law, which once inspired popular movements,276 can certainly be translated into accessible and compelling language.277 Moreover, businesses that are threatened by dominant incumbents would also have to be engaged and mobilized to challenge the power and narrative of the anti-Section 5 monopolists and oligopolists.

While the near term is bleak on antitrust, among other areas, a future FTC may be in a position to restore the progressive-populist foundation of antitrust law. Under the leadership of the conservative Maureen Ohlhausen, the FTC appears poised for at least a few more years of dormancy.278 But looking past the immediate future and to subsequent leadership, the FTC may have an opportunity to make antitrust a force against concentrated private power and for ordinary Americans.

An antitrust revival through Section 5 would not be easy and would require determination and patience on the part of those inside and outside government who believe in a reinvigorated Section 5. And success, even under the best circumstances, would not be guaranteed. Yet, popular demand for aggressive anti-monopoly action seems to be growing. Given economic realities, the growing discontent in the country in general does not appear poised to subside any time soon.279 And the success of the FCC’s net neutrality rules show that there is a way forward for the FTC even in the face of fierce corporate opposition. The FTC’s defeats in the late 1970s do not compel another generation of agency quiescence.

#### 2) DIFFERENT PROCESS---backlash was NOT because of broad interpretations, but because commissioners were needlessly adversarial and undermined comity. The CP uses an inclusive, participatory rulemaking process that solves.

Thomas B. Leary 9, Of Counsel, Hogan & Hartson, LLP, Washington, D.C., Federal Trade Commissioner 1999-2005, “A Suggestion for the Revival of Section 5,” FTC, https://www.ftc.gov/sites/default/files/documents/public\_events/section-5-ftc-act-competition-statute/tleary.pdf

Objections and Opportunities

A major objection to more extensive reliance on Section 5 is based on what is sometimes called “the lesson of the 1970s” by those Commission veterans who served at that time. In the 1970s, proposals for an aggressive use of Section 5 by a particularly activist Chairman, Michael Pertschuk, stimulated a particularly harsh Congressional response that almost destroyed the Commission. 26/ It is possible, however, to make use of Section 5 in ways that take appropriate account of the “lesson of the 1970s.”

The 1970s were characterized not only by civil unrest over an unpopular war but also by the (hopefully) high-water mark of an intellectual movement that was profoundly skeptical about a market system driven by consumer sovereignty. This essentially paternalistic view, prominently associated with celebrities like John Galbraith and Ralph Nader, obviously had a strong influence on the leadership of the Federal Trade Commission at the time.

In addition, the Chairman appeared to claim an unprecedented span of authority. Since non-compliance with any financially burdensome regulation could confer a competitive advantage, he speculated that this non-compliance could potentially be attacked by the Commission as an unfair method of competition. 27/ He may have been just musing aloud but, given the overheated politics of the time, the private sector reacted with alarm.

This alarm was heightened because the Chairman appeared to view the private bar with suspicion. He refused to take a Chairman’s traditional seat on the ABA Antitrust Section’s Council -- a gesture of no practical importance because there were other ways to share opinion and information, but it was nevertheless keenly resented at the time. I remember. And, there were consequences.

There was a perception that the Commission had been co-opted by the counter-culture, was out of control, and was suspicious of the private sector. Members of Congress were made aware of these concerns. It is inconceivable that the leadership of the Federal Trade Commission today or in the foreseeable future would make the same mistakes. The fact that the Commission is hosting this Workshop is a good indication that the “lesson of the 1970s” has been taken to heart.

An open dialogue between the Commission and the private sector is particularly important. Because we have become so used to it in recent years, we may not appreciate how remarkable it is. Although the Commission and members of the private bar may have an adversarial relationship in certain specific cases, they are not adversaries across the board.

Most members of the private bar want the antitrust agencies to be pro-active, efficient and successful overall. Of course, some of these sentiments are prompted by pure self-interest. But, both “sides” have a genuine belief that competition law is important, and there is remarkable agreement on fundamental principles. Even lawyers employed on large corporate staffs feel that way, which is not so surprising when you consider that their employers are customers as well as sellers.

Commission transparency is important not only because candor elicits reciprocal candor from people who really are friends of the agency. It is also important because the Commission is a very small agency, with a huge responsibility. It cannot be everywhere at once, and needs a well informed private bar that will also enforce the law.

### 2NC---AT: Certainty

#### Ignore their broad evidence about enforcer or agency action---rulemaking follows APA procedures which require clear disclosure and standards.

Rohit Chopra & Lina M. Khan 20, Chopra is Commissioner, Federal Trade Commission; Khan was Academic Fellow, Columbia Law School, Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary, former Legal Fellow, Federal Trade Commission, “The Case for “Unfair Methods of Competition” Rulemaking,” The University of Chicago Law Review, Vol. 87, pp 357-379

First, rulemaking would enable the Commission to issue clear rules to give market participants sufficient notice about what the law is, helping ensure that enforcement is predictable.43 The APA requires agencies engaging in rulemaking to provide the public with adequate notice of a proposed rule. The notice must include the substance of the rule, the legal authority under which the agency has proposed the rule, and the date the rule will come into effect.44 An agency must publish the final rule in the Federal Register at least thirty days before the rule becomes effective.45

These procedural requirements promote clear rules and provide clear notice. As the Supreme Court has stated, a “fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”46 Clear rules also help deliver consistent enforcement and predictable results. Reducing ambiguity about what the law is will enable market participants to channel their resources and behavior more productively and will allow market entrants and entrepreneurs to compete on more of a level playing field.

#### Other Section 5 ambiguity thumps---it can already be invoked in enforcement AND guidance, which is way worse.

Justin (Gus) Hurwitz 14, Assistant Professor of Law, University of Nebraska College of Law, “Chevron and the Limits of Administrative Antitrust,” University of Pittsburgh Law Review, vol. 76, no. 2, 2, 2014, lawreview.law.pitt.edu, doi:10.5195/lawreview.2014.324

To understand this, we must understand how the FTC has wielded its Section 5 authority in recent years. The scope of Section 5 is unclear. This is substantially because the FTC has declined to explain what it believes the scope to be. Lacking such explanation, firms must live in constant fear of the agency’s potential vigilance. The possibility that the agency may challenge a firm’s conduct is a daunting one, especially because the FTC may elect to first challenge the conduct internally through an administrative hearing.241 [FOOTNOTE 241 BEGINS] Indeed, under most circumstances the FTC will pursue a Section 5 violation in an administrative hearing. The FTC has authority to litigate many matters in the first instance before an Article III court and can litigate most matters in the first instance before an Article III court upon petition to the Attorney General. See generally Fed. Trade Comm’n, A Brief Overview of the Federal Trade Commission’s Investigative and Law Enforcement Authority, FTC.GOV, http://www.ftc.gov/about-ftc/what-we-do/ enforcement-authority (last updated July 2008). [FOOTNOTE 241 ENDS] Should the defendant-firm lose, that decision may be appealed only to the full FTC. Until recently, the FTC never failed to uphold a complaint under its review.242 Effectively, then, it is only after multiple years and two complete rounds of litigation that the matter can be appealed to an Article III tribunal.243

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

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

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

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

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

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

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

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

#### Comparative evidence also proves---interpretations don’t expand the scope, merely clarify.

CFR ‘76

Code of Federal Regulations - Note: “The Board” – internally referenced – is the “Cost Accounting Standards Board”. The Code of Federal Regulations of the United States of America - Pt. 401, Preamble C - Amendment published 11-30-76 - Preamble C Preamble to the addition of Appendix -- Interpretation No. 1 added on Nov. 30, 1976, at 41 FR 52427. Interpretation No. 1 to Part 401, Cost Accounting Standard, Consistency in Estimating, Accumulating and Reporting Costs, is being published today by the Cost Accounting Standards Board pursuant to Section 719 of the Defense Production Act of 1950, as amended. (Pub.L.91-379, 50 U.S.C.App. 2168 – modified for language that may offend - Pages 255-6

Comments of particular significance with respect to the proposed Interpretation are discussed below.

1. Need for an Interpretation

Several commentators stated that the Interpretation expands the scope and is not consistent with the intent of Part 401, which they say requires only a comparison of actual costs with estimated costs for direct material. They argued that the Defense Contract Audit Agency (DCAA) guidance to its field auditors in October 1973 satisfactorily explained the meaning of Part 401. In general, these commentators felt that an Interpretation to CAS 401 was not needed.

The Board's research indicates that an Interpretation is needed. Numerous and widespread questions have been raised concerning whether application of a percentage factor to a base as a means of estimating the costs of certain additional direct material requirements is in compliance with Part 401 when the contractor accumulates direct material costs in an undifferentiated account. The Board notes that a similar question with respect to direct labor is specifically addressed in Part 401. Section 401.60(b)(5). In that Illustration, the accumulation of total engineering labor in one undifferentiated account is not in compliance with Part 401 where the contractor estimates engineering labor by cost function. Part 401 does not, however, specifically address the consistency requirement for direct materials, nor did the DCAA guidance specifically cover this matter. Accordingly, the Board concludes that this Interpretation is needed.

In ~~view~~ (light) of the fact that the Interpretation clarifies what is already required by Part 401, the Board does not agree that it expands the scope of the Standard.

#### Second, 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.

#### Regulations are NOT law.

P.O.G.O. ’15 (Project On Government Oversight *- Internally quoting Chief Justice Roberts’ Majority Opinion in US Supreme Court’s 7-2 decision in Department of Homeland Security v. MacLean* (2015) - which dealt largely with statutory interpretation. The Project On Government Oversight (POGO). POGO’s investigators are experts in working with whistleblowers and other sources inside the government who come forward with information that we then verify using the Freedom of Information Act, interviews, and other fact-finding strategies. We publish these findings and release them to the media, Members of Congress and their constituents, executive branch agencies and offices, public interest groups, and our supporters. In addition to quoting the Majority Opinion from the Chief Justice, this article was authored by POGO’s Phillip Shaverdian – who is currently a Judicial Law Clerk within the U.S. District Court System and, at the time of the writing, was an intern within and correspondent on behalf of the Project On Government Oversight - “Agency Rules and Regulations Are Not Laws” - FEBRUARY 10, 2015 - #E&F – modified for language that may offend - https://www.pogo.org/analysis/2015/02/agency-rules-and-regulations-are-not-laws/)

Agency Rules and Regulations Are Not Laws

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

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

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

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

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

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

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

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

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

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

### 2NC---AT: PICs Bad

#### [ ] Prohibition vs agency enforcement is a core-topic controversy.

Topic Paper ‘21

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

II. Core Controversy

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

## ADV CP

### 2NC---Condo

## Adv---Blockchain

### 2NC---A/C

### 2NC---AT: Bitcoin !

### 2NC---AT: Bees !

#### No impact to bees

Palmer 15 **–** Brian Palmer, Writer for OnEarth Magazine, “Would a World Without Bees Be a World Without Us?”, National Resources Defense Council, 5-18, <https://www.nrdc.org/onearth/would-world-without-bees-be-world-without-us> [language modified]

Albert Einstein is sometimes quoted as saying, “If the bee disappears from the surface of the earth, [hu]man[s] would have no more than four years to live.” It’s **highly unlikely** that Einstein said that. For one thing, there’s **no evidence** of him saying it. For another, the statement is **hyperbolic** and **wrong** (and Einstein was rarely wrong). But there is a kernel of truth in the famous misquote.

Bees and humans have been through a lot together. People began keeping bees as early as 20,000 BCE, according to the late and eminent melittologist Eva Crane. (Yes, someone who studies bees is a melittologist.) To put that length of time into perspective, the average global temperature 22,000 years ago was more than 35 degrees Fahrenheit cooler than today, and ice sheets covered large parts of North America. Beekeeping probably predates the dawn of agriculture, which occurred about 12,000 years ago, and likely made farming possible.

How important are bees to farming today? If you ask 10 reporters that question, you’ll get 11 answers. Some stories say that bees pollinate more than two-thirds of our most important crops, while others say it’s closer to one-third. A spread of that size indicates a lack of authoritative scholarship on the subject. My review of the literature suggests the same.

The **most thorough and informative study** came back in 2007, when an international team of agricultural scholars reviewed the importance of animal pollinators, including bees, to farming. Their results could encourage both the alarmists and the minimizers in the world of bee observation. The group found that 87 crops worldwide employ animal pollinators, compared to only 28 that can survive without such assistance. Since honeybees are by consensus the most important animal pollinators, those are scary numbers.

Look at the data differently, though, and it's clear why the misattributed Einstein quote is a **bit of an exaggeration**. Approximately 60 percent of the total volume of food grown worldwide **does not require animal pollination**. Many staple foods, such as wheat, rice, and corn, are among those 28 crops that require **no help from bees**. They either self-pollinate or get help from the wind. Those foods make up a **tremendous proportion** of human calorie intake worldwide.

Even among the 87 crops that use animal pollinators, there are **varying degrees** of how much the plants need them. Only 13 absolutely require animal pollination, while 30 more are “highly dependent” on it. **Production of the remaining crops would likely continue without bees with only slightly lower yields**.

So **if honeybees did disappear** for good, **humans would probably not go extinct** (at least not solely for that reason). But our diets would still suffer tremendously. The variety of foods available would diminish, and the cost of certain products would surge. The California Almond Board, for example, has been campaigning to save bees for years. Without bees and their ilk, the group says, almonds “simply wouldn’t exist.” We’d still have coffee without bees, but it would become expensive and rare. The coffee flower is only open for pollination for three or four days. If no insect happens by in that short window, the plant won’t be pollinated.

### AT: Blockchain Nuke War !

#### No Chinese tech superiority – they can’t integrate.

Gilli and Gilli ’19 [Andrea Gilli, Senior Researcher in Military Affairs at the NATO Defense College in Rome and an Affiliate of the Center for International Security and Cooperation of Stanford University in Palo Alto, CA. He holds a PhD in Social and Political Science from the European University Institute (EUI) in Fiesole (Florence, Italy), an MSc in International Relations from the London School of Economics and Political Science (LSE) and a BA in Political Science and Economics from the University of Turin (Italy). Mauro Gilli, Senior Researcher in Military Technology and International Security. He received his PhD in Political Science from Northwestern University in 2015, with major in International Relations and minor in Methodology. He has an MA from the School of Advanced International Studies, Johns Hopkins University, and a BA from the University of Turin. Before joining CSS, he was a post-​doctoral fellow at the Dickey Center, Dartmouth College. *MIT Press Journals*, 2-15-2019, “Why China Has Not Caught Up Yet: Military-Technological Superiority and the Limits of Imitation, Reverse Engineering, and Cyber Espionage,” <https://www.mitpressjournals.org/doi/full/10.1162/isec_a_00337>, DOA: 11-9-2020, NREM]

The evidence we presented shows that in comparison to the early twentieth century, when Germany could quickly catch up with Great Britain in all-big-gun battleships, in recent years China has faced enormous hurdles in closing the military-technological gap both with the United States in fifth-generation aircraft and even with Russia in fourth-generation jet fighters. China has struggled to achieve success despite its massive cyber theft activities, the benefits it has derived from globalization, its acquisition of foreign companies and technology, and an unprecedented inflow of foreign direct investments.

With this research, we provide a unified theory that helps explain why the imitation of advanced weapon systems has become more difficult with the transition from the industrial to the information age. Our theory holds also in other cases. For example, it helps account for the Soviet Union's incapacity to catch up with the United States in the later phases of the Cold War.336 Our theory thus challenges the view among international relations scholars that catching up technologically is about will—which, for states, ultimately means mobilizing the necessary capital. Although warranted in the past, this view is no longer valid, because simply pouring money into a project cannot generate the necessary defense industrial base and experience with the technology being pursued.337

More important, by explaining the enduring military-technological superiority the United States currently enjoys, our research contributes to one of the most significant debates in the field of international relations theory: the potential for the United States to maintain its unrivaled power. Many observers and practitioners believe that U.S. primacy in military technology is coming to an end, because of the diffusion of cheap counter-systems and because of opportunities to exploit both dual-use technologies and cyber espionage to free ride on more advanced countries' research. Chinese military strategists themselves “subscribe to the arguments [of] Alexander Gerschenkron” about the advantage of imitation, and their technology and industrial policies have tried as much as possible to rely on the acquisition, assimilation, and replication of foreign technology.338 Our theory indicates that under the current technological paradigm, the entry barriers for modern military platforms will remain massive, even for the most advanced countries. Meanwhile, the tacit and organizational know-how related to the production of modern weapon systems will force aspiring great powers to engage in extensive and expensive experimentation and testing before they can deliver state-of-the-art technology. We are not claiming that China or other countries are destined to fail in their attempts to close the military-technological gap with the United States. Rather, we argue that rising great powers cannot easily copy foreign technology and thus catch up militarily at a fraction of the cost and at a fraction of the time of their competitors.

Indirectly, our research also addresses existing concerns about future counter-systems that China could deploy to contest the Western Pacific. Although some of these systems are comparatively cheap and unsophisticated (e.g., missiles), key platforms such as submarines and jet fighters are extremely complex, while other emerging technologies such as remotely piloted and autonomous vehicles are becoming increasingly sophisticated and costly, and are expected “to converge rapidly with those of manned aircraft.”339 Similarly, exploiting emerging technologies (e.g., robotics or artificial intelligence) for military purposes will not be easy: to integrate them into their weapon systems, countries will have to invest massively in a broad range of disciplines and gain experience through trial and error. The key question for the future is whether the fourth industrial revolution will bring about a paradigmatic transformation in production, and if so, how this transformation will change the dynamics of innovation and imitation. Given that “as the capabilities of autonomy increase … considerable system complexity will be created as the software and hardware is expanded,”340 our research suggests that the difficulty of imitation will continue to increase. Further research should focus on this topic.341

## Adv---FTC

### 2NC---No Cred Now

**Huge losses coming**

**McLaughlin 21**—(MBA from New York University, staff writer at Bloomberg). David McLaughlin. 6/23/21. “Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts”. Bloomberg Businessweek. 6/23/2021. <https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda>.

Now comes the **hard part**: putting her agenda into action. The **biggest hurdle**, say antitrust experts, is a **judiciary** that has made it very **difficult** for competition **watchdogs** to win ambitious cases. And to make **any change of consequence**, whether breaking up a monopoly or stopping a takeover, enforcers must **prevail** in court.

“**None** of that is **easy**, and it’s **particularly** not easy when courts are very **conservative**, as they are today,” says Stephen Calkins, a law professor at Wayne State University and a former general counsel at the FTC. “She’s certainly talked about breaking up companies but, my golly, that’s **incredibly hard** to do.”

**Courts and congress tank FTC cred --- plan cant solve**

**McGinnis 8/26**—(George C. Dix Professor in Constitutional Law at Northwestern University). John O. McGinnis. August 26, 2021. “Abandoning the Consumer Welfare Standard”. Law & Liberty. <https://lawliberty.org/abandoning-the-consumer-welfare-standard/>. Accessed 9/8/21.

The Biden Administration wants to **transform antitrust law**. In doing so, it would dispense with a four-decade-old consensus that the welfare of consumers should be the object of competition policy. This principle would be replaced with a mixture of untested economic ideas combined with a view that antitrust law should somehow advance democracy. If the latter standard seems unclear, its very lack of clarity may be an implicit goal. One of the achievements of the consumer welfare standard is to provide a relatively objective methodology that constrains judges and prosecutors in wielding the awesome power of government against the liberty of private entrepreneurs. Not only will this **vision** harm **economic efficiency**, it will also make it easier for government officials to **reward friendly companies** and **punish those who do not do the administration’s bidding** even on matters **unrelated to competition**.

Fortunately, the administration faces **substantial obstacles** in transforming antitrust law. The consumer welfare standard is now entrenched in judicial decisions. Both Democratic and Republican justices have been applying it for years, even if they occasionally debate the nuances of its application. The administration thus has put its faith in using the regulatory levers of power to change the law, but here too it is likely to meet **judicial resistance**. Moreover, anything it does by regulation can and will likely be undone by the next Republican administration. Should Biden **succeed**, competition law would become **yet another part of government-by-whiplash** and in an area **central to our prosperity**.

It is true that there are difficult and novel issues in applying antitrust law to some new information technologies, like Google and Facebook, even under a consumer welfare standard. For instance, these tech firms may provide great free services, but they also have a stranglehold over consumer data. But the Biden administration’s blunderbuss approach to antitrust law is not limited to tech, but represents a potentially new mechanism of government control over the commanding heights of the economy.

The Executive Order

President Biden’s “Executive Order on Promoting Competition in the American Economy” shows how his administration wants to change antitrust law. One should not be misled by the frequent reference to “promoting competition” in the order. First, there are other values touted in the order that are in tension with promoting competition. Second, competition is a slippery term. Economists understand it as a process that leads to efficient outcomes and equilibriums. Biden’s order frequently seems to equate competition with low prices and reflects a view that the more companies are in a market, the more “competitive” it is. Third, the order reflects an ideology holding that the market itself tends toward inefficiency and needs to be corrected by government. But all too frequently, it is government regulations that harm competition by helping incumbents.

The order at times is clear that it wants protection for some favored groups from competition. It states, for instance, that “consolidation in the agricultural industry is making it too hard for small family farms to survive.” The reason that small family farms often have trouble competing is that the bigger ones are overall more efficient. There is little danger of monopoly in farms. There remain scores of enterprises in harvesting and otherwise producing food. The economy should welcome efficient consolidation. The concern expressed in the order reflects a previously rejected view offered by the Supreme Court a hundred years ago that antitrust policy should prevent “the driving out of business of the small dealers and worthy men . . . who might be unable to readjust themselves to their altered surrounding.” Biden here not only fails to promote competition. He expressly restrains it.

At another point, the order calls on antitrust to “provide an environment conducive to the preservation of our democratic and political institutions”—another view once popular but correctly rejected for decades. It is not plausible for regulators to determine the legal rules by which companies will advance democracy. This kind of open-ended and nebulous standard invites discretionary actions by the government. Businesses cannot plan unless the law on competition possesses at least a modicum of clarity. And with less ability to plan, there will be less efficiency.

When it comes to items such as pharmaceuticals, Biden is all in favor of low prices. But low prices are not the same as the efficient equilibrium which sound competition sustains. In pharmaceuticals, even more than with other products, the market also delivers innovation from which society greatly benefits. Artificially depressing the prices for drugs may result in less innovation. Indeed, it may result in more suffering and death. To be sure, figuring out the right policies for efficient innovation in pharmaceuticals is not easy, requiring the careful calibration of patent policy. But it is revealing that, as he does elsewhere in the order, Biden focuses simply on getting prices lower rather than taking a long-term social welfare approach. Like the celebration of the family farm, this is a recipe for populism, not an increase in our welfare.

The order simply states that consolidation in industries has led to high prices. But consolidation can lead to efficiencies as well, and it can bring not only lower prices but higher quality. Currently, antitrust law has various careful screens that measure market power and assess business practices to determine whether these practices are more likely to lead to better outcomes for consumers in terms of both prices and quality. These have been reflected in the guidelines regulating mergers—guidelines renewed by both Republican and Democratic administrations—that have become crucial to predictable decision-making by prosecutors and courts.

One sensible idea in the order encourages agencies to consider the effect of cartels and consolidation on the ability of workers to compete. It is true that some sectors of industry have on occasion conspired to hold down wages. While such practices are illegal under the traditional principles of antitrust, it is perfectly reasonable to put agencies on notice that they should be on the lookout for this disturbance of market equilibrium. In the long run, the economy and consumers benefit greatly from an unconstrained market in human capital.

But what the order does not require is as striking as to what it does. One of the greatest threats to competition is regulation by government. Unnecessary regulation of products harms competition because big companies can diffuse the costs of regulation over many more units than can small companies. Regulation of capital markets makes it harder for startups to enter and displace incumbents. Tariffs impede foreign competition. When the whole world is the effective market, companies in any particular nation necessarily have a smaller share.

Yet the Biden Executive order does not call for any general reconsideration of government policy in any of these areas other than one sentence suggesting that OMB should consider the effect of regulations on entry barriers, (something it should already do in its traditional cost-benefit analysis). The order is generally premised on the false belief that the main barriers to competition are those created by the market, not by government.

To be sure, there is a welcome call for dismantling unnecessary occupational licensing, permitting hearing aids to be sold without a prescription, and preventing the (mostly) state regulations that put up the price of alcohol. But these provisions only show that the President is likely to stumble on correct economic policies when they are immediately popular. A regulatory regime restricted to addressing externalities, opening capital markets, and promoting free trade would be best for competition and prosperity in the long run, but these will not be central elements of Biden’s policy.

The Prospects

The E**x**ecutive **O**rder, however ill-conceived the specifics are, will do the most damage if it **changes antitrust law fundamentally**. And here the **Biden** administration **happily faces problems**. We have had **forty years of bipartisan competition policy** focused generally on consumer welfare. The President **does not have a political eraser** to wipe that away.

One possibility is for the Biden administration to **persuade Congress** to **enact major changes in antitrust law**. The House Judiciary Committee has passed a few bills that would make is harder for tech companies to merge with other companies. But these measures are not yet going anywhere on the House floor, and it will be difficult, if not **impossible**, to get any **substantial changes** in antitrust law through the evenly divided Senate.

Thus, the **admin**istration has pinned its strategy on transformation through **administrative fiat**. To that end, it appointed **Lina Khan**, a 32-year-old associate law professor to become Chairman of the FTC. Khan may be the single **most radical appointment** in the Biden administration. She opposed Amazon’s acquisition of Whole Foods, although Amazon and Whole Foods together constitute a very small part of the grocery market, and no other company in the history of the United States has been more innovative than Amazon.

Khan has begun by voting along with her Democratic colleagues on the commission to revoke a policy of the FTC supported by both Democratic and Republican administrations that essentially defined “unfair method of competition” by reference to methods that undermined consumer welfare. The idea no doubt is to write a regulation that would provide a more open-ended approach, perhaps taking into account other values like democracy and decentralization, even if these are at the expense of consumer welfare.

**But** it is not at all clear Khan can succeed. On such a central question as the definition of **competition**, courts **may not give her agency much deference** now that the Roberts Court appears to have **stopped applying Chevron**—the quintessential modern case for agency deference—to major questions raised by a statute. The meaning of competition is obviously the major question for competition law, and courts are likely to determine that for themselves, influenced by decades of their own consumer welfare jurisprudence.

**Sustained loses inevitable and in bigger cases than the plan**

**McLaughlin 21**—(MBA from New York University, staff writer at Bloomberg). David McLaughlin. 6/23/21. “Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts”. Bloomberg Businessweek. 6/23/2021. <https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda>.

The FTC has suffered some **stinging defeats recently**. **Last year**, the agency **lost** a major monopoly **case** filed against chipmaker [Qualcomm](https://www.bloomberg.com/quote/QCOM:US). In April, a **unanimous** Supreme Court **eliminated a tool** used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

**Big losses** in the courts would eventually **hurt Khan**’s authority and **demoralize** her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a **sports team** that is **known** to its opponents as **unable to win**,” he says. But defeats **also** could provide the foundation for the kind of sweeping **antitrust legislation** that Khan and her supporters want.

### 2NC---FTC Fails

#### Regulation is vital – FTC alone fails because it’s constrained and can’t provide prescriptive regulations

Ajo 21 [Esther Ajao, News Writer - TechTarget , 10-19-2021 https://searchenterpriseai.techtarget.com/feature/FTC-pursues-AI-regulation-bans-biased-algorithms]

While the RealPage case involved the FTC regulating how companies use data, if not algorithms specifically, the FTC is constrained by the limits of its own authority.

"The FTC is a law enforcement agency," Schildkraut said, noting that it can only act on complaints or discoveries of violations. "It's not providing prescriptive regulation saying you need to do 'X, Y, Z' in order to comply with the law because the United States doesn't have a generally applicable statute saying that if you're using artificial intelligence, you've got to have a bias impact statement or any other particular feature."

However, Schildkraut added that this approach fits with what the FTC has done in the past to enforce other provisions of the law -- responding to complaints about alleged violations such as misleading consumers or failing to provide disclosures and harming consumers.

"The FCRA is definitely not a comprehensive AI regulatory framework," said John Davisson, senior counsel at the Electronic Privacy Information Center. "It's not imposing clear fairness obligations or requiring companies that use AI to validate the tools that they're using or even imposing nondiscrimination requirements."

Kashyap Kompella, analyst at RPA2AI research, said in a previous interview with SearchEnterpriseAI that in the absence of regulation, many organizations fail to meet the core principles of AI ethics: safe, accountable, transparent and trustworthy.

"The current stage in the industry is that these are self-regulatory," Kompella said in the interview.

Because oversight is currently self-regulatory, many companies turn to AI as a "cheap and easy solution to all their problems," Davisson said. "There may be lots of situations where AI is not appropriate and shouldn't be used at all."

The most effective way for consumers to be protected against harmful AI-based determinations about them is comprehensive regulation, Davisson said. Without meaningful regulation, companies do not feel the pressure to ensure that the tools they're using are free from bias.

#### FTC alone fails in AI – empirics prove they’re outmatched by tech firms

Robertson 21 [Adi Robertson, Senior Reporter at The Verge, 4-20-2021 https://www.theverge.com/2021/4/20/22393873/ftc-ai-machine-learning-race-gender-bias-legal-violation]

The US Federal Trade Commission has warned companies against using biased artificial intelligence, saying they may break consumer protection laws. A new blog post notes that AI tools can reflect “troubling” racial and gender biases. If those tools are applied in areas like housing or employment, falsely advertised as unbiased, or trained on data that is gathered deceptively, the agency says it could intervene.

“In a rush to embrace new technology, be careful not to overpromise what your algorithm can deliver,” writes FTC attorney Elisa Jillson — particularly when promising decisions that don’t reflect racial or gender bias. “The result may be deception, discrimination — and an FTC law enforcement action.”

As Protocol points out, FTC chair Rebecca Slaughter recently called algorithm-based bias “an economic justice issue.” Slaughter and Jillson both mention that companies could be prosecuted under the Equal Credit Opportunity Act or the Fair Credit Reporting Act for biased and unfair AI-powered decisions, and unfair and deceptive practices could also fall under Section 5 of the FTC Act.

“It’s important to hold yourself accountable for your algorithm’s performance. Our recommendations for transparency and independence can help you do just that. But keep in mind that if you don’t hold yourself accountable, the FTC may do it for you,” writes Jillson.

Artificial intelligence holds the potential to mitigate human bias in processes like hiring, but it can also reproduce or exaggerate that bias, particularly if it’s trained in data that reflects it. Facial recognition, for instance, produces less accurate results for Black subjects — potentially encouraging false identifications and arrests when police use it. In 2019, researchers found that a popular health care algorithm made Black patients less likely to receive important medical care, reflecting preexisting disparities in the system. Automated gender recognition tech can use simplistic methods that misclassify transgender or nonbinary people. And automated processes — which are frequently proprietary and secret — can create “black boxes” where it’s difficult to understand or challenge faulty results.

The European Union recently indicated that it may take a stronger stance on some AI applications, potentially banning its use for “indiscriminate surveillance” and social credit scores. With these latest statements, the FTC has signaled that it’s interested in cracking down on specific, harmful uses.

But it’s still in the early days of doing so, and critics have questioned whether it can meaningfully enforce its rules against major tech companies. In a Senate hearing statement today, FTC Commissioner Rohit Chopra complained that “time and time again, when large firms flagrantly violate the law, the FTC is unwilling to pursue meaningful accountability measures,” urging Congress and other commissioners to “turn the page on the FTC’s perceived powerlessness.” In the world of AI, that could mean scrutinizing companies like Facebook, Amazon, Microsoft, and Google — all of which have invested significant resources in powerful systems.

### 2NC---AT: City Innovation !

### 2NC---AT: Naval Power !

#### Naval power irrelevant-no statistical correlation

Souva, 12 **(**Brian Crisher and Mark, Power At Sea: A Naval Power Dataset, 1865-2011. PhD candidate and PhD, Political Science Department, Florida State University

http://myweb.fsu.edu/bbc09/Crisher-Souva%20-%20Power%20At%20Sea%20v2.0%20full.pdf)

Figure 4: Non-Directed Dyad Model Results Figure 7 also displays estimates and confidence intervals for this relationship in the post-World War II period. Here we also find an interesting result. We see that in the post-WWII period, there is no statistical relationship between the CINC power ratio variable and the onset of a MID. However, our variable, Navy Power Ratio is statistically and positively associated with a MID. As this ratio increases, meaning the balance of power in the dyad becomes more uneven, the likelihood of a MID increases. The positive relationship between the Naval Power Ratio and the onset of a MID is particularly noteworthy as the standard finding in empirical research on interstate conflict is that conflict is more likely under the condition of power parity than power preponderance. At least when it comes to naval power and non-contiguous conflict, we find the opposite.11

### 2NC---AT: AI !

#### No impact---it’s way too far off.

König 19 (Ellen König, Head of Data Engineering @ WhereIsMyTransport; “Worry about present-day AI first, and far off AGI hypotheticals second,” 06-28-19, Skynet Today, <https://www.skynettoday.com/editorials/dont-worry-agi/>, TM)

How close are we to autonomous AI?

Those who want to alarm us all about existential dangers coming from autonomous AI assume that what is called “artificial general intelligence” or even “superintelligence” will be a reality very soon.

Wikipedia describes “Artificial general intelligence” (AGI as “the intelligence of a machine that could successfully perform any intellectual task that a human being can”. That includes elusive skills such as self-awareness and anything from conducting conversation to composing sophisticated music to teaching essay composition to other machines (or people!). While different machines can currently do some of these things, no single software is right now capable of all of these tasks.

“Superintelligence” goes beyond AGI in assuming that machines will one day “possess intelligence far surpassing that of the brightest and most gifted human minds”. By definition, what tasks and skills that results in is completely beyond our imagination.

In contrast, current AI systems are usually called “narrow” AI, because they are only capable of performing very narrowly scoped tasks. Examples include programs that are able to distinguish between cats and dogs in images or recognize words in English speech.

We are currently very far away from achieving artificial general or even superintelligence. In fact, we are not much closer than we were in the early stages of AI research in the 1950s. We are just developing better and better narrow AI.

One of the main reasons for that is that we don’t even know yet what “Human intelligence” really is, let alone how it works. This is not a useful starting point for engineering a machine capable of reproducing these skills. And we don’t know yet either whether we will be able to recreate human intelligence recreating human brains and bodies.

For the sake of argument, let us assume that we will one day build artificial general intelligence. Even AI researcher themselves, who, by profession, need to be optimistic on this matter, seem to agree that day is still far in the future — 80 years atleast. It is hard to imagine any research project reliably delivering on such a long timeline.

By that time, climate models suggest that the earth’s average temperature could be up to 5 degrees Celsius (8.6F) hotter than today. Which might give us more immediate things to worry about than the chance of AI taking over.

Most scenarios of existential threats coming from AI assume creative agency on the part of the AI. In other words, they assume that the AI is capable of evolving beyond the purpose it was designed for. Either by setting its own threatening goals. Or by using destructive means to achieve its goals that it was not supposed to use.

Yet current AI is not capable of setting its own goals or changing its means of achieving these. While current AI can tell you whether a photo shows you with the same friend that it saw in a different photo, it cannot decide whether to play beautiful violin music instead of classifying images. Those people who describe the risks of autonomous AI do not provide plausible explanations of how AI could get these abilities.

#### No slaughterbots/LAWs impact.

Scharre 17 (Paul Scharre, vice president and director of studies at the Center for a New American Security, Led the Defense Department's working group that resulted in the DoD policy directive on autonomy in weapons; “Why You Shouldn’t Fear “Slaughterbots;” 12-22-17, IEEE Spectrum, <https://spectrum.ieee.org/why-you-shouldnt-fear-slaughterbots>, TM) [modified for readability]

The central premise of “Slaughterbots" is that in the future militaries will build autonomous microdrones with shaped charges that can fly up to someone's head and detonate an explosive, killing the person. In the film, these “slaughterbots" quickly fall into the hands of terrorists, resulting in mass killings worldwide.

The basic concept is grounded in technical reality. In the real world, the Islamic State has used off-the-shelf quadcopters equipped with small explosives to attack Iraqi troops, killing or wounding dozens of Iraqi soldiers. Today's terrorist drones are largely remotely controlled, but hobbyist drones are becoming increasingly autonomous. The latest models can navigate to a fixed target on their own, avoid obstacles, and autonomously track and follow moving objects. A small drone equipped with facial recognition technology could potentially be used to autonomously search for and kill specific individuals, as “Slaughterbots" envisions. It took me just a few minutes of searching online to find the resources necessary to download and train a free neural network to do facial recognition. So while no one has yet cobbled the technology together in the way the video depicts, all of the components are real.

I want to make something very clear: There is nothing we can do to keep that underlying technology out of the hands of would-be terrorists. This is upsetting, but it's very important to understand. Just like how terrorists can and do use cars to ram crowds of civilians, the underlying technology to turn hobbyist drones into crude autonomous weapons is already too ubiquitous to stop. This is a genuine problem, and the best response is to focus on defensive measures to counter drones along with surveillance to catch would-be terrorists ahead of time.

The “Slaughterbots" video takes this problem and blows it out of proportion, however, suggesting that drones would be used by terrorists as robotic weapons of mass destruction, killing thousands of people at a time. Fortunately, this nightmare scenario is [unlikely] about as likely to happen as HAL 9000 locking you out of the pod bay doors. The technology shown in the video is plausible, but basically everything else is a bunch of malarkey. The video assumes the following:

* Governments will mass-produce lethal microdrones to use them as weapons of mass destruction;
* There are no effective defenses against lethal microdrones;
* Governments are incapable of keeping military-grade weapons out of the hands of terrorists;
* Terrorists are capable of launching large-scale coordinated attacks.
* These assumptions range from questionable, at best, to completely fanciful.

Of course, the video is fictional, and defense planners do often use fictionalized scenarios to help policymakers think through plausible events that may occur. As a defense analyst at a think tank and in my prior job as a strategic planner at the Pentagon, I used fictional scenarios to help inform choices about what technologies the United States military should invest in. To be useful, however, these scenarios need to at least be plausible. They need to be something that could happen. The scenario depicted in the “Slaughterbots" video fails to account for political and strategic realities about how governments use military technology.

First, there is no evidence that governments are planning to mass-produce small drones to kill civilians in large numbers. In my forthcoming book, Army of None: Autonomous Weapons and the Future of War, I examine next-generation weapons being built in defense labs around the world. Russia, China, and the United States are all racing ahead on autonomy and artificial intelligence. But the types of weapons they are building are generally aimed at fighting other militaries. They are “counter-force" weapons, not “counter-value" weapons that would target civilians. Counter-force autonomous weapons raise their own sets of concerns, but they aren't designed for mass targeting of civilians, nor could they be easily repurposed to do so.

Second, in the video, we're told the drones can defeat “any countermeasure." TV pundits scream, “We can't defend ourselves." This isn't fiction; it's farce. Every military technology has a countermeasure, and countermeasures against small drones aren't even hypothetical. The U.S. government is actively working on ways to shoot down, jam, fry, hack, ensnare, or otherwise defeat small drones. The microdrones in the video could be defeated by something as simple as chicken wire. The video shows heavier-payload drones blasting holes through walls so that other drones can get inside, but the solution is simply layered defenses. Military analysts look at the cost-exchange ratio between offense and defense, and in this case, the costs heavily favor static defenders.

In a world where terrorists launch occasional small-scale attacks using DIY drones, people are unlikely to absorb the inconveniences of building robust defenses, just like people don't wear body armor to protect against the unlikely event of being caught in a mass shooting. But if an enemy country built hundreds of thousands of drones to wipe out a city, you bet there'd be a run on chicken wire. The video takes a plausible problem—terrorist attacks with drones—and scales it up without factoring in how others would respond. If lethal microdrones were built en masse, defenses and countermeasures would be a national priority, and in this case the countermeasures are simple. Any weapon that can be defeated by a net isn't a weapon of mass destruction.

Third, the video assumes that militaries are incapable of preventing terrorists from getting access to military-grade weapons. But we don't give terrorists hand grenades, rocket launchers, or machine guns today. Terrorist attacks with drones are a concern precisely because they involve DIY explosives strapped to readily available technology. This is a genuine problem, but again the video scales this threat up in ways that are unrealistic. Even if militaries were to build lethal microdrones, terrorists are no more likely to get their hands on large numbers of them than other military technologies. Weapons do proliferate over time to nonstate actors in war zones, but just because antitank guided missiles are prevalent in Syria doesn't mean they're commonplace in New York. Terrorists use airplanes and trucks for attacks precisely because successfully smuggling military-grade weapons into a Western country isn't that easy.

Fourth, the video assumes terrorists can carry out coordinated attacks at a scale that is not plausible. In one scene, two men release a swarm of about 50 drones from the back of a van. This specific scene is fairly realistic; one of the challenges of autonomy is that a small group of people could launch a larger attack than might otherwise be possible. Something like a truck full of 50 drones is a reasonable possibility. Again, though, the video takes this scenario to the absurd. The video claims that 8,300 people are killed in simultaneous attacks. If the men in the van depict a typical attack, then this level of casualties would equate to over 160 coordinated attacks worldwide. Terrorist groups often launch coordinated attacks, but usually on the scale of single digit numbers of attacks. The video assumes not just superweapons but ones that are in the hands of supervillains.

The movie uses hype and fear to skip past these crucial assumptions, and in doing so it undermines any rational debate about the risk of terrorists acquiring autonomous weapons. The video makes clear we're supposed to be afraid. But what are we supposed to be afraid of? A weapon that chooses its own targets (which the video is actually ambiguous about)? A weapon with no countermeasure? The fact that terrorists can get ahold of the weapon? The ability of autonomy to scale up attacks? If you want to drum up fears of “killer robots," the video is great. But as a substantive analysis of the issue, it falls apart under even the most casual scrutiny. The video doesn't put forward an argument. It's sensationalist fear-mongering.

Of course, the whole purpose of the video is to scare the viewer into action. The video concludes with UC Berkeley professor Stuart Russell warning of the dangers of autonomous weapons and imploring the viewer to act now to stop this nightmare from becoming a reality. I have tremendous respect for Stuart Russell, both as an artificial intelligence researcher and as a contributor to the debate on autonomous weapons. I've hosted Russell at events at the Center for a New American Security, where I run a research program on artificial intelligence and global security. I have no doubt Russell's views are sincere. But in attempting to persuade the viewer, the video makes assumptions that are not supportable.

# 1NR

### 2NC – Climate ! O/V

#### Disad outweighs – prefer scope and reversibility – failure to pass BBB dooms foreign follow-through on commitments post-Glasgow conference – existentially scorches the planet – that’s Chon and Cohn

#### 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.

### 2NC – Climate ! O/V – Methane !

#### AND, Chon says it’s particularly key to end global methane emissions – otherwise, a clathrate gun chain reaction independent of CO2 makes short-term extinction inevitable – NOT ONLY by massively accelerating warming, BUT ALSO via hydrogen sulfide suffocation

Dorritie 7 (Dan Dorritie, paleontologist, studies mass extinction events, M.A. Geology, University of California—Davis, “Preface,” *Killer in our Midst*, 2007, http://www.killerinourmidst.com/)

Deep beneath the surface of the sea, buried in the oxygen-depleted muds that have accumulated over the ages on the underwater margins of the continents, lies a vast store of natural gas that probably well exceeds, in its carbon equivalence, the entire supply of all other oil, gas, and coal on the planet. Most of this immense store of natural gas, largely comprised of methane, lies trapped in icy cages called hydrates. Below these hydrates is a huge quantity of methane as free gas bubbles, blocked from release by the hydrate, and temperature and pressure conditions above. Still more methane, as hydrate, is found in the permanently frozen (permafrost) regions that surround the poles. Methane is a much more powerful greenhouse gas than carbon dioxide, the gas which is currently warming our globe, even though methane remains in the atmosphere for a much shorter time. If released abruptly, seafloor methane has the potential to deliver a stunning jolt of heat to the planet's already increasing temperatures. Even if released more gradually, seafloor methane will inevitably compound the problem of global warming. But abruptly or gradually, as we warm the planet by our dumping of carbon dioixde into the atmosphere, the seafloor will also warm, and its methane will inevitably be released. This book is about the release of that methane, and, in particular, about the possibility of methane catastrophe. Methane catastrophes have occurred several times in Earth's history, and when they have occurred, they have sometimes caused abrupt changes in the history of life, and at least one significant extinction. That extinction, at the end of **the** Permian Period 250 million years ago, **is** the greatest in the history of life. More than 90% of the then-existing species perished, and the course of life on Earth was altered forever. If a methane catastrophe were to happen in the near future, it is likely that not only would a considerable percentage of existing plants and animals be killed off, but a large percentage of the human population as well, as a result of the climate change and significantly more hostile environmental conditions. Yet we may well be heading toward such a catastrophe, produced by our warming of the planet. Just how rapidly seafloor methane will be released depends on numerous factors that are quite difficult to assess. It is possible that seafloor methane will be released so slowly that it will only have a relatively minor warming effect on Earth's climate. On the other hand, because the coming methane release will be the result of our warming of the planet via the burning of fossil and other acrbon fuels, it could happen much more quickly. Indeed, it seems that we are currently pumping the greenhouse gas carbon dioxide into the atmosphere at a much faster -- perhaps tens to hundreds of times faster -- rate than has ever before naturally occurred in the last half billion years or so of the Earth's history. The catastrophic warming we are causing is -- to the best of our knowledge -- unprecedented since the early days of our planet, billions of years ago. Such warming could well lead to methane catastrophe. Theonset of a methane catastrophe would be abrupt because it could be initiated by a major submarine landslide, which can happen in a matter of days or even hours, or by the venting of vast quantities of seafloor methane over a period of decades. These events can take place in what is essentially a geological eyeblink. Additional slumping and/or venting can continue for centuries to millennia. The amount of methane that can be released is indeed massive. Estimates of the amount of seafloor methane generally range from about 5000 billion metric tons to around 20,000 billion metric tons (a metric ton is equal to 1.1 imperial tons, the standard ton used in the United States), though they usually range around 10,000 billion metric tons. This amount of methane contains about 7500 billion metric tons of carbon, vastly more than all the estimated carbon in all fossil fuels: petroleum, coal, and natural gas. There is a simple way to put 10,000 billion metric tons of methane into perspective: it contains about ten times the amount of carbon (largely in the form of carbon dioxide) as does the entire atmosphere. Moreover, though methane entering the atmosphere is quickly oxidized, it is oxidized to carbon dioxide, so the problem of its warming ability will remain with us for thousands of years into the future. A methane catastrophe, therefore, is an abrupt surge of greenhouse gas that could rival or exceed the carbon dioxide warming of the planet. It could potentially overwhelm the natural heat regulatory system of the Earth, which operates in a much more gradual way, and on a much more protracted time scale. The quantity of methane that could be released is so massive there would be no remedial action that people would be able to take to mitigate it except in the most superficial way. Once a methane catastrophe were to begin, there would be major consequences for the planet and its inhabitants, human and other, and we would be able to do little except wait it out. Methane, in a very real sense, is the joker in the deck of global warming. As with the current increase in atmospheric carbon dioxide, a large methane release will undoubtedly contribute to an increase in acid rain, and, through its impact on global warming, a further rise of sea level, increased desertification, increased heavy precipitation, and extreme weather events. The slowing of ocean circulation or its actual stagnation because of greater planetary warmth are also possibilities. Such a slowing would paradoxically produce a decreased transport of warm water to the coasts of northeastern North America and northernmost Europe, making for much colder winters. In addition, the destabilization of methane within seafloor sediments can send 20 meter (60 foot) high tsunamis crashing into nearby coastlines. A methane catastrophe can have other major consequences in addition to sudden global warming. It can accelerate the slow but deadly acidification of the surface ocean (down to about 100 meters, or about 300 feet), which is now occurring as a result of the increase of carbon dioxide in the atmosphere and ocean. The methane can combine with dissolved oceanic oxygen, depleting the deeper part of the ocean (that is, the ocean below about 100 meters) of oxygen, and killing off the oxygen-using (aerobic) organisms at those depths. As acidification penetrates the deep ocean, even organisms that do not use oxygen (anaerobes) will be affected. Then there are the worst case scenarios. With the warming of the world ocean, its chemical balance and biological composition will change. The ocean will become stratified, with mixing between its surface and the deep ocean becoming increasingly restricted. If the deep ocean becomes fully anoxic (devoid of oxygen), it will also become toxic, as the remaining anaerobic organisms pump out the deadly gas hydrogen sulfide. In sufficient quantities, that gas could escape oceanic confinement to poison the atmosphere and, combining with the iron in the blood's hemoglobin, kill terrestrial organisms, including us. But the composition of the atmosphere could also change in a second way, because the amount of free oxygen depends on two things: the actual production of oxygen (by the ocean's photosynthetic plankton and terrestrial green plants) and the delivery of large amounts of carbon (as part of a "rain" of organic debris from organisms closer to the surface) to the ocean's bottom. This carbon, if not removed from the global carbon cycle by sinking and eventual burial in the ocean floor, will combine with oxygen and lower its concentration in the atmosphere. Once oceanic anoxia kills off aerobic marine organisms (those which require oxygen to live), the natural regulatory system for carbon will be sent into a tailspin. The amount of organic debris produced in surface waters will likely be reduced, the amount that rapidly descends to the ocean floor will be reduced, and the proportion that gets decomposed on the way to the bottom will be significantly reduced. Exactly how this will play out is unclear, because certain of these changes will operate to slow the removal of carbon from the global carbon cycle (which will act to decrease the amount of oxygen in the atmosphere), while others will enhance it (increasing atmospheric oxygen). When a similar disruption of the marine ecosystem occurred at the end of the Permian, a quarter of a billion years ago, atmospheric oxygen dropped to a fraction (about 2/5ths) of its previous level. But increased oxygen could be just as bad: oxygen ions (sometimes referred to as free radicals) can inflict genetic damage to DNA, causing mutations and cancer. We are certainly on the verge of releasing a huge amount of permafrost and seafloor methane within a very short time; we may also be on the brink of methane catastrophe. By our own actions -- by our continuing and increasing use of carbon fuels -- we are slowly but inexorably creating the conditions during which a such a methane release, catastrophic or more gradual, could occur. We probably have time to prevent a catastrophe, but there is a certain non-negligible possibility that we have already crossed -- or will shortly cross -- an invisible threshold that will render a methane catastrophe inevitable and unstoppable. Major anthropogenic global warming by carbon dioxide and possible methane catastrophe will be events more cataclysmic than any that can befall Earth, except for an impact with a giant asteroid or comet, or a stellar explosion in our neighborhood of the Milky Way. These other events, however, are quite rare and unlikely in our immediate future. Major anthropogenic global warming by carbon dioxide and possible methane catastrophe, by contrast, are highly likely and much more immediate. More importantly, unlike those other possible cataclysms, both are preventable -- probably -- if we take them seriously, begin to understand them, and -- most difficult of all -- begin to take steps to avert them. It has become fashionable to dismiss predictions of catastrophe, partly because they have become so common. Many of us have become jaded, what with one such prediction after another. We used to hear a good deal about nuclear holocaust, or nuclear winter, but as those threats seem to have faded in the public consciousness, there are others which have replaced it. We now hear of doomsday asteroids, the ozone hole, SARS (severe acute respiratory syndrome), bird flu, global warming, and the obliteration of species. The number of threats seems to be increasing. And, actually, that number is increasing. Prior to this epoch in human history, people simply did not have the ability to impact our planet in potentially catastrophic ways. Unfortunately, we now do have that ability. The ozone hole is a simple example. Never before was humanity on the verge of destroying this gaseous umbrella which protects us (and all other organisms that live at or near the surface of the Earth) from deadly ultraviolet light. Humanity simply didn't have that kind of power. But the advent of chloro-flouro-carbon (CFC) refrigerants gave us that ability, and the ozone layer sustained significant damage before the problem began to be addressed. Luckily, this is a problem for which there is a ready solution, and by banning the production of these ozone-harming chemicals, we have begun to bring the problem under control. The problem of carbon dioxide emissions, consequent global warming, and the prospect of a major seafloor methane release, however, will not be addressed so easily. We currently have no technology to trap and hold large quantities of carbon dioxide, and we are not likely to have such a technology for many decades in the future -- if indeed we ever will. Some of the excess carbon dioxide we produce is in fact currently slipping beyond our potential grasp, entering the oceans at the astounding rate of about a million metric tons (a metric ton = 1.1 standard ton) per hour, and increasing the acidity of seawater. There is, in addition, great resistance in a world economy driven and dominated by fossil fuels to shifting the energy base of that economy. Enormous corporate profits and personal fortunes, and the success of political efforts on their behalf, are also at stake. Slowing the stampede to catastrophically higher global temperatures and ocean destruction will require substantial international effort. Even so, should we today stop spewing carbon dioxide into the atmosphere, global temperatures will continue to increase for some time into the future. Despite our aversion to warnings of imminent catastrophe, our problem may be that we are not alarmed enough. Because of the delayed consequences of our dumping carbon dioxide into the atmosphere, the major effects of global warming will only be starting just as the world supply of oil is well on its way to depletion (about 2050). But already startling environmental changes -- the early, "minor" effects of global warming -- are occurring on Earth: ·With the exception of 1996, the years from 1995 to 2004 constitute 9 of the 10 warmest years since systematic record keeping began in 1861. ·The year 2005 was the warmest year since records have been kept. The next warmest years, in order, are, 1998, 2002, 2003, and 2004. ·Globally, glaciers have retreated, on average, almost some 15% since 1850. Glacial retreat has been recorded in Tibet, Alaska, Peru, the Alps, Kenya, Antarctica. ·Alaskan temperatures have risen about 2.8°C (5°F) in the past few decades. ·In the past several decades, about 40% of Arctic Ocean sea ice has disappeared. (Some researchers now believe, however, that at least part of this sea ice loss may be due to changing wind patterns over the North Pole, but these wind changes, themselves, may be due to a warming climate.) ·Between 1965 and 1995, the amount of melt water from the Arctic region going into the North Atlantic was about 20,000 cubic kilometers (about 4800 cubic miles), the equivalent of the fresh water in all of the Great Lakes combined (Superior, Huron, Erie, and Ontario) with the exception of Lake Michigan. Preliminary calculations indicate that an additional 18,000 cubic kilometers (4300 cubic miles) or so could shut down ocean circulation in the North Atlantic. That shutdown could occur in two decades or less, though most scientists believe it will take much longer. The Intergovernmental Panel on Climate Change, comprised of thousands of climate scientists worldwide, puts the likely slowing at about 25% by 2100. ·Trade winds across the equatorial Pacific have slowed because of higher humidity, and are projected to do so even more as time passes. The increase in humidity is the result of increased evaporation, traceable to global warming. This slowing of Pacific winds will also slow the ocean surface currents that the winds push along. Some scientists fear that at some point "the switch will be tripped" and nutrient-rich bottom water will no longer rise to the surface in the eastern Pacific (a "permanent El Niño" situation which did exist about three million years ago). These waters feed the plankton which feed the anchovies in one of the world's greatest fisheries. Much of the anchovy harvest is dried, ground up, and added to chicken feed, of which it is a major protein constituent. If the switch does trip, good-bye to inexpensive chicken. ·Upper ocean temperatures have risen between 0.5 and 1.0°C (0.9 to 1.8°F) since 1960. Deeper water has also warmed, but not by as much. The total amount of energy that has gone into the oceans as a consequence of global warming, however, is staggering: enough to run the state of California for 200,000 years. ·In addition to significant retreats of the glaciers on Greenland's margins, as of 2005 Greenland's massive ice sheet is melting at more than twice the rate it was in the previous three years. Glaciologists report that portions of the sheet which were solid ice just a few years ago are now riddled with meltwater caverns. ·The deep waters of the Southern Ocean (that which encircles Antarctica) have become significantly colder and less salty than they were just ten years ago. This is presumably due to the melting of Southern Ocean sea ice and parts of the Antarctic ice cap. Deep ocean waters have been previously presumed to be fairly isolated from climate warming but the data obtained from depths of four to five kilometers (more than two to three miles) now suggests otherwise. Such changes could significantly impact global ocean circulation. ·The Southern Ocean, which may absorb more carbon dioxide than any other region of the global ocean, as of more than twenty-five years ago ceased to absorb additional carbon dioxide. In fact, its ability to absorb carbon dioxide seems to be declining -- even as atmospheric levels of that gas are reaching ever higher levels -- most likely due to increased wind speed over that part of the global ocean. The higher wind speed in turn has been attributed to both global warming and the destruction of the Antarctic ozone layer. Because oceans eventually absorb most of the carbon dioxide that goes into the atmosphere, the declining ability of the Southern Ocean to absorb carbon dioxide is a particularly ominous development. ·Huge expanses of floating ice around Antarctica have collapsed into fragments in just weeks, after existing for tens of thousands of years. In addition, the ice that currently covers West Antarctica, known as the West Antarctic Ice Sheet (WAIS), which was quite recently (as of 2001) judged by the UN's Intergovernmental Panel on Climate Change (IPCC) as unlikely to collapse before the end of this century, or even for the next millennium, may now be starting to disintegrate, according to the head of the British Antarctic Survey. If this ice sheet does collapse, global sea level will rise by about 5 meters (16 feet). ·While global daytime temperatures, on average, increased only about 0.33°C (0.6°F) between 1979 and 2003, nighttime temperatures have risen more than 1°C (1.8°F). These environmental changes have had significant biological effects: ·In the eastern North Atlantic, warm-water phytoplankton (marine organisms that photosynthesize, produce oxygen, and constitute the bottom of the food chain) has moved north 1000 km (600 miles) over the past 40 years. ·In 2004, almost a quarter of a million breeding pairs of seabirds in islands north of Scotland failed to produce more than a few dozen offspring. Their reproductive failure is most likely due to the North Atlantic phytoplankton changes, and the consequent breakdown of the marine food chain. Many of the affected birds migrate back and forth between the Scottish islands and areas around the Southern Ocean (off Antarctica) over the course of the year. Starved in the north, they will never make it back to the south. Similar changes have been observed off the West Coast of the United States in 2005. ·Krill, small (about 5 cm/2 inches in length), shrimplike creatures which are a main food source for seals, whales, and penguins in the Southern Ocean, have declined in places to just 20% of their previous number in just 30 years. ·Grass now survives the winter in places on the Antarctic Peninsula, the warmest part of that frigid continent. When grass last was able to survive Antarctic winters is unknown. ·In the 17 year period from 1987 to 2003, the number and size of major wildfires in the western U. S. has increased dramatically. Compared to the 17 year period stretching from 1970 to 1986, the number of major wildfires has increased fourfold, and the area burned by major fires has increased sixfold. All of the presumed causes for this increase -- the earlier melting of snow, increased summer temperatures, an extended fire season, and an increase in the area of high-altitude forests which is vulnerable to such fires -- can be traced to global warming. ·The small increase in global nighttime temperatures indicated above (1°C/1.8°F), is sufficient to have reduced the biomass (the total mass of roots, stems, leaves, and grain) of rice, humankind's most important crop, by 10%. Rice is the primary foodstuff for more than half of the population of the world. With the warming, the release of methane has begun to follow: ·The Western Siberian Peat Bog, comprising an area of a million square kilometers (about 385,000 square miles, roughly the combined size of France and Germany), has begun to melt. This area is underlain by permafrost (permanently frozen ground that has existed since the Ice Age) perhaps a kilometer (about 3000 feet) deep. The permafrost contains an enormous amount of methane hydrate, possibly as much as a quarter of the total inventory of continental methane. As this permafrost warms and melts -- an irreversible process -- methane is released. This melting may add a quantity of methane to the atmosphere roughly equivalent to that released by all other natural and agricultural sources, increasing global warming by 10 to 25%. ·Already, methane emissions from certain areas of Siberian permafrost is proceeding much more rapidly than previously estimated. These extensive areas, characterized by Ice Age deposits of wind-blown dust (called loess) with high carbon and very high ice (50 to 90%) contents, are bubbling out methane at a rate five times higher than earlier presumed. Overall, these "yedoma" regions are contributing an additional 10 to 63% the total rate of methane release from the wetlands of the north. These are only the early effects, ripples from the storm which is to come. Remedial action is still possible, but the likelihood of catastrophe becomes more certain with each passing year.

### AT: Won’t Pass – T/L

#### Compromise centered on Manchin’s counter-proposal still solves our impact but accommodates all of their uniqueness ev

Dillon et. al. 1/3 (Jeremy Dillon, Emma Dumain, Nick Sobczyk, George Cahlink, EE Daily, January 3, 2022, https://www.eenews.net/articles/whats-ahead-for-build-back-better-4-scenarios/)//NRG

Congress returns this week with President Biden’s social spending and climate package hanging by a thread after Sen. Joe Manchin threw the effort into chaos last month.

How the Senate responds to the West Virginia Democrat’s blockade will be the question of the year as more than $1.7 trillion — including a record $555 billion for climate-inspired initiatives — hangs in the balance.

Democrats have vowed to return to negotiations following Manchin’s public proclamation that he would oppose the reconciliation package as currently constructed.

“Let’s go back to the table, let’s get this done, it is too important for us,” Rep. Pramila Jayapal (D-Wash.), chair of the Congressional Progressive Caucus, said on MSNBC’s "Sunday Show" with Jonathan Capehart.

Last month, a frustrated Jayapal called on the president to use his executive powers to secure policies on climate and other priorities, but there has been a growing consensus around salvaging "Build Back Better."

Senate Democrats intend to force a vote on the package this month to put lawmakers on record, Majority Leader Chuck Schumer (D-N.Y.) announced in late December (Greenwire, Dec. 22, 2021).

That vote is expected to fail, but may serve as the catalyst for renewed efforts on the package. Over the holiday break, multiple Democrats said they remained confident that the bill would pass, though in reduced form.

Jayapal said yesterday her goal was to dial back the bill to the framework negotiated over the summer by multiple players, including Manchin.

“What we hope now, and what I know the president is working on with Sen. Manchin, is to go back to the original framework that he committed to,” she said.

Jayapal argued that only a few provisions, “maybe 10 percent” of the House-passed bill, H.R. 5376, were things he hadn’t agreed to.

“He also agreed to the provisions around climate change,” she said. “Those were already negotiated from what we had originally wanted,” but she said she still considered them “a significant investment on really taking on climate and reducing carbon emissions.”

Here’s a breakdown of four scenarios for how Congress could proceed:

1. Go small

Schumer and House Speaker Nancy Pelosi (D-Calif.) both made clear late last year that efforts to pass the "Build Back Better Act" would continue into 2022. That might very well mean negotiating a smaller package.

Democratic leaders and the White House have already twice scaled back their ambitions: from $6 trillion to $3.5 trillion, then down to $1.7 trillion. While liberals groused about the myriad concessions that had to be made to accommodate smaller price tags, Senate Budget Chair Bernie Sanders (I-Vt.) and Jayapal were ultimately happy to tout the significant policy gains that would be achieved in the compromise bills.

If top negotiators are able to work with Manchin on a bill closer to his original $1.5 trillion ballpark, there’s a not impossible scenario in which Sanders, Jayapal and their allies would continue to stand by that even smaller bill for the good of the party, boasting it would still make historic investments in climate and social welfare spending.

Environmental advocates, too, would likely be hard-pressed to publicly complain about legislation that would still spend a record number of dollars fighting the climate crisis, even if the climate portion of the overall reconciliation bill is whittled below the current $550 billion mark.

At the same time, making cuts to the existing legislation is going to be a grueling, painful process, and there’s no guarantee lawmakers will be able to find satisfactory compromises in a 50-50 Senate and a House in which Democrats only enjoy their majority by a three-vote margin.

In the climate space, the first cuts could go to programs addressing natural solutions to combat climate change, like funding for coastal resiliency and wildfire mitigation on public lands.

Interior Department initiatives were originally going to be excluded entirely from the reconciliation bill until lawmakers and advocates fought to have that funding reinstated, a sign that the chief negotiators consider these line items expendable when stacked up against programs that would directly reduce emissions.

#### BUT sustaining PC 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.

### 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.”

### A2: Shield

#### The warrant for courts shield is that the recent court hasn’t made controversial rulings

Their ev for reference, MSU is (go) green Mazzon 18, Professor of Law at the University of Illinois at Urbana-Champaign; Chicago-Kent Law Review, “Above Politics: Congress and the Supreme Court in 2017”, 8/9/2018, Volume 93

Absent, too, in the modern Congress is any real sense that the Supreme Court can be brought to heel: say, by constitutional amendment, by stripping the Court of funding, by hauling in members of the Court to justify their rulings before congressional investigatory committees, by appointing special counsels to review and report back on what the Court does, by impeaching the Justices (or locking them up), or by simply

the Court does not rule in ways that offend enough members of Congress (or their constituents) for them to invest the energy—and political capital—required to generate these sorts of measures. Perhaps, instead, members of Congress do not consider such measures appropriate in our constitutional system. In either case, modesty on the part of Congress is the result, even in an era when a single party controls both the Congress and the White House. The lesson for the Court is that so long as it continues doing—more or less—what is has done in recent years, it has very little to fear from the Congress.

#### Controversial Supreme Court decisions effect the Congressional agenda

**Owens, 10** (Ryan, “The Separation of Powers and Supreme Court Agenda Setting,” April 2010, accessed 7-3-21, <https://media.law.wisc.edu/m/c9yjq/separationofpowersagendasetting.pdf>) JFN

Congress and the president, the argument goes, possess the tools to influence the Court (Harvey and Friedman 2006, 2009). For example, Congress can initiate or support constitutional amendments to overturn judicial decisions. Among other powers, it can reduce the Court’s budget, alter its composition, strip it of jurisdiction, hold judicial salaries constant, change pension provisions, and impeach justices. By far, however, the most frequently (and likely to be) used tool in the congressional arsenal is the legislative override. As Eskridge points out, Congress is not afraid to override Supreme Court decisions it dislikes and has done so on a number of occasions (1991, 335–36).

#### Republicans will blame Biden for the plan

**Cadelago and Daniels,** 6-28-**21** (Christopher and Eugene, “Republicans ramp up attacks on Biden on … everything,” accessed 6-28-21, <https://www.politico.com/news/2021/06/28/spray-and-pray-biden-republicans-496660>) JFN

That hasn’t, however, kept Republicans from swinging away. Biden is far and away the GOP’s No. 1 villain on Facebook, according to an analysis conducted by the Democratic-leaning communications agency Bully Pulpit Interactive for POLITICO. Over the last three months, Republicans and affiliated groups and committees have spent nearly $2.5 million trying to paint Biden and his priorities in a negative light. That’s more than three times what they’ve spent on Facebook ads targeting other leading Democrats — from Sen. Bernie Sanders (I-Vt.), House Speaker Nancy Pelosi, Rep. Alexandria Ocasio-Cortez (D-N.Y.) and former President Barack Obama — and issues like socialism, fake news, and “defund the police” combined. POLITICO opted to review the last three months of data, after Facebook lifted the ban on political ads on its U.S. platform. But there has not been a consistent theme to the anti-Biden spots. The attack lines getting pushed most on the right go after Biden’s massive infrastructure push, his call for raising taxes, dark money groups that support his agenda, his position on guns and the rise of gun violence in U.S. cities, according to Bully Pulpit’s analysis. The conservative outfit Americans for Prosperity is leading the online barrage against Biden, with spots on infrastructure, taxes and the American Jobs Plan. The National Rifle Association has run online ads targeting Biden on guns, claiming that the “Biden Political Machine [will] dismantle the 2nd Amendment.” But others running ads go after Biden on wholly different topics. Sen. Ted Cruz (R-Texas) has run spots accusing the president of trying to pack the Supreme Court with “radical leftiest justices” (Biden has only put together a commission to study the composition of the courts).

### Link Debate – Rest

#### 1. Plan ignites a culture war dumpster fire – their link turns are outdated, answers the adams card

Eiven 11-29 (Mitch Eiven, writer who covers cryptocurrency, politics, the intersection between the two, “Lines in the sand: US Congress is bringing partisan politics to crypto,” Magazine by Cointelegraph, 11-29-2021, <https://cointelegraph.com/magazine/2021/11/29/united-states-congress-bringing-partisan-politics-to-crypto>)

“There are too many members of Congress that don’t have enough of a base of understanding. Congress needs to come in and bring regulations to this space.”

Cryptocurrency is now a hot topic in United States politics. It wasn’t always like this, however, especially since just a small percentage of U.S. politicians seem to have a baseline understanding of digital currencies.

Nonetheless, it’s now a wedge issue poised to morph into a destructive political football destined to occupy a new, uncomfortable space in the consistently devolving culture war. Although this is certainly uninspiring news for common sense political discourse in the United States, it remains to be determined how this will affect the cryptocurrency ecosystem.

Let’s start with how we got here.

A few legislators in Congress have been quietly working on common-sense cryptocurrency regulation for the last couple of years. These informed Democrats and Republicans in the U.S. House of Representatives and Senate have thoughtfully taken up the matter and drafted legislative measures to define cryptocurrencies, hedge investor risk, defend against fraud and integrate digital currency into a long-established centralized system. Those waiting for lawmakers on either side of the aisle to embrace total decentralization will be waiting a very long time. Nobody in the 117th Congress is considering this, and it’s unlikely anyone in the 118th, 119th or 120th will either.

Until recently, cryptocurrency and blockchain matters weren’t discussed in the halls of Congress, just like they weren’t coffee table issues for the majority of disinterested American citizens. They weren’t political wedge issues and were never topics of debate between candidates Donald Trump and Joe Biden in the 2020 presidential campaign. Most Americans simply didn’t know or didn’t care about cryptocurrency.

Things changed for several reasons, not the least of which were the Twitter proclivities of billionaire and Dogecoin enthusiast Elon Musk. On April 25, Musk tweeted: “Am hosting SNL on May 8.” The price of Dogecoin closed at $0.27 that day. The following day, NBC confirmed Musk’s announcement, and the memecoin closed at $0.32.

Soon after, Shark Tank star and billionaire Dallas Mavericks owner Mark Cuban announced that BitPay handles “Mavs Doge sales,” also saying on the The Ellen DeGeneres Show: “At the Mavs, we sell a lot of merchandise for Dogecoin, and you should look at it for the Ellen Shop.”

At that point, crypto newbies eager to make a quick buck clamored to open accounts on welcoming trading platforms like Robinhood and cryptocurrency exchanges like Coinbase. DOGE started buzzing, inexperienced speculators flocked, HODLer’s held on, and just before Musk’s opening monologue, Dogecoin topped out at nearly $0.75. Musk’s performance was uninspiring, and Crypto Twitter was unimpressed. During a skit later in the show, Musk’s character said Dogecoin was a “hustle.”

Dogecoin began its precipitous descent. FOMO, as it so often does, led to FUD — sometimes sad, desperately delusional FUD. Two of Washington, DC’s most prolific, competitive politicians took notice and quickly took up positions on either side of the cryptocurrency regulatory debate.

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

Carstensen ‘21

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

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

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

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

#### 3. 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.

### 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.

### Fiat s

### AT: PC Fails

### AT: US Not Key

#### US is key to Glasgow follow-through

Milman 21 (Oliver Milman, environment reporter for Guardian US, BA Media Writing, Solent University; **internally citing Linda Mearns, IPCC report co-author, and Leah Stokes, a climate policy expert at the University of California, Santa Barbara**; “UN climate report raises pressure on Biden to seize a rare moment,” The Guardian, 8-10-2021, https://www.theguardian.com/us-news/2021/aug/10/un-climate-report-joe-biden-us-response)

A stark UN report on how humanity has caused unprecedented, and in some cases “irreversible”, changes to the world’s climate has heaped further pressure on Joe Biden to deliver upon what may be his sole chance to pass significant legislation to confront the climate crisis and break a decade of American political inertia.

The US president said the release on Monday of the Intergovernmental Panel on Climate Change report showed that “we can’t wait to tackle the climate crisis. The signs are unmistakable. The science is undeniable. And the cost of inaction keeps mounting.”

The IPCC report, developed over the past eight years by scientists who combed over more than 14,000 studies, shows that the US, like the rest of the world, is running out of time to avoid disastrous climate impacts, with a critical global heating threshold of 1.5C to be breached far earlier than previously expected, potentially within a decade.

“This is not a future problem, it’s a problem now. I’m literally seeing climate change out of my window, climate change is in my lungs,” said Linda Mearns, an IPCC report co-author located in Boulder, Colorado, which has been baked in extreme heat and wildfire smoke in recent weeks.

Mearns, who has been involved in IPCC reports since 1990, said the latest iteration was “very through and disturbing” and demanded a strong response. “I’m not sure what will be required for people to get it, but my hope is that it will galvanize everyone in Glasgow to meet their agreements,” she added in reference to UN climate talks between world leaders in October.

Much of that global action will hinge upon the response mustered by the US, the world’s second-largest carbon emitter. Biden’s narrow window of opportunity to drastically cut emissions is dependent upon the contents of a $3.5tn bill that Democrats hope to pass before midterm elections next year, when the party may well lose control of Congress.

“Congress didn’t pass a climate bill in 2009 and it’s taken over a decade to get us back to serious climate legislation,” said Leah Stokes, a climate policy expert at the University of California, Santa Barbara. “This summer is the best chance we have ever had to pass a big climate bill. This is it. President Biden is poised to become the climate president we need. But there are no more decades left to waste.”

Stokes said she was “very optimistic” the reconciliation bill would include two critical climate measures to help the US slash its emissions in half this decade – a scheme to help utilities to phase out fossil fuels from the electricity grid and tax credits to encourage renewable energy and electric cars.

The measures will need the support of all Senate Democrats, including Joe Manchin and Kyrsten Sinema, who have expressed doubts over the scope of the bill. Republicans, who have long allied with the fossil fuel industry to oppose any significant action to avert the climate emergency, are uniformly opposed to the bill.

### AT: Warming !/D

#### AND, cumulative disjunctive existential risk across a litany of direct and indirect impacts mathematically outweighs any other X-risk

Dr. Yew-Kwang Ng 19, Winsemius Professor of Economics at Nanyang Technological University, Fellow of the Academy of Social Sciences in Australia and Member of Advisory Board at the Global Priorities Institute at Oxford University, PhD in Economics from Sydney University, “Keynote: Global Extinction and Animal Welfare: Two Priorities for Effective Altruism”, Global Policy, Volume 10, Number 2, May 2019, pp. 258–266

Catastrophic climate change

Though by no means certain, CCC causing global extinction is possible due to interrelated factors of non-linearity, cascading effects, positive feedbacks, multiplicative factors, critical thresholds and tipping points (e.g. Barnosky and Hadly, 2016; Belaia et al., 2017; Buldyrev et al., 2010; Grainger, 2017; Hansen and Sato, 2012; IPCC 2014; Kareiva and Carranza, 2018; Osmond and Klausmeier, 2017; Rothman, 2017; Schuur et al., 2015; Sims and Finnoff, 2016; Van Aalst, 2006).7

A possibly imminent tipping point could be in the form of ‘an abrupt ice sheet collapse [that] could cause a rapid sea level rise’ (Baum et al., 2011, p. 399). There are many avenues for positive feedback in global warming, including:

• the replacement of an ice sea by a liquid ocean surface from melting reduces the reflection and increases the absorption of sunlight, leading to faster warming;

• the drying of forests from warming increases forest fires and the release of more carbon; and

• higher ocean temperatures may lead to the release of methane trapped under the ocean floor, producing runaway global warming.

Though there are also avenues for negative feedback, the scientific consensus is for an overall net positive feedback (Roe and Baker, 2007). Thus, the Global Challenges Foundation (2017, p. 25) concludes, ‘The world is currently completely unprepared to envisage, and even less deal with, the consequences of CCC’.

The threat of sea-level rising from global warming is well known, but there are also other likely and more imminent threats to the survivability of mankind and other living things. For example, Sherwood and Huber (2010) emphasize the adaptability limit to climate change due to heat stress from high environmental wet-bulb temperature. They show that ‘even modest global warming could ... expose large fractions of the [world] population to unprecedented heat stress’ p. 9552 and that with substantial global warming, ‘the area of land rendered uninhabitable by heat stress would dwarf that affected by rising sea level’ p. 9555, making extinction much more likely and the relatively moderate damages estimated by most integrated assessment models unreliably low.

While imminent extinction is very unlikely and may not come for a long time even under business as usual, the main point is that we cannot rule it out. Annan and Hargreaves (2011, pp. 434–435) may be right that there is ‘an upper 95 per cent probability limit for S [temperature increase] ... to lie close to 4°C, and certainly well below 6°C’. However, probabilities of 5 per cent, 0.5 per cent, 0.05 per cent or even 0.005 per cent of excessive warming and the resulting extinction probabilities cannot be ruled out and are unacceptable. Even if there is only a 1 per cent probability that there is a time bomb in the airplane, you probably want to change your flight. Extinction of the whole world is more important to avoid by literally a trillion times.

### AT: Legislation Not Key – T/L

#### Legislation’s key to foreign follow-through on Glasgow commitments

Friedman 12-22 (Lisa Friedman, reporter on the climate desk at The New York Times, formerly worked for Climatewire, former Washington bureau chief for The Oakland Tribune and The Los Angeles Daily News, “It’s Been a Bad Week for Build Back Better. Here’s What It Means,” The New York Times, 12-22-2021, https://www.nytimes.com/2021/12/22/climate/nyt-climate-newsletter-build-back-better.html)

A picture containing chart

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Senator Joe Manchin III may have single-handedly torpedoed President Biden’s climate change and social spending bill this week when he announced that he would not support the measure.

That’s because the Senate is evenly split and Mr. Manchin, a West Virginia Democrat with strong ties to the coal industry, holds the swing vote.

As I wrote this week with Coral Davenport, without the legislation, and the estimated $555 billion in clean energy incentives that it contains, the United States will very likely miss the president’s goal for emissions reductions.

Marked

You can see the estimated U.S. greenhouse gas trajectories with and without Build Back Better on the chart above by my colleagues Nadja Popovich and Brad Plumer. And, you can read their full article here.

The consequences for the planet are high. Unless the United States, which is the largest emitter in historical terms, moves decisively to reduce its emissions from burning fossil fuels, it will be difficult to persuade other countries to make cuts. That sharply increases the chances of blowing past a dangerous temperature threshold: 1.5 degrees Celsius of warming compared to preindustrial levels.

Quotable: “I don’t think we can tackle the climate crisis at the scale that’s necessary without passing this law,” said Leah Stokes, a professor of environmental policy at the University of California, Santa Barbara.

Despite the legislative setbacks, the Biden administration is moving forward with other climate measures that don’t require the approval of Congress. Here are two from the past week:

The Interior Department approved two big solar projects in California.

The Environmental Protection Agency announced stricter auto pollution rules.

#### Other countries assume the next president will reverse anything other than legislation

Linskey et al 10-20 (Annie Linskey, White House reporter at The Washington Post, formerly reported for the Boston Globe's Washington bureau, Bloomberg News and BusinessWeek, and the Baltimore Sun, graduate of Wellesley College; Sean Sullivan, covers the White House at The Washington Post, on-air contributor to CBSN, graduate of Hamilton College; and Matt Viser, national political reporter at The Washington Post, former deputy chief of the Washington Bureau for the Boston Globe, winner of the White House Correspondents' Association's Merriman Smith Award, graduate of the University of North Carolina at Chapel Hill; “Biden abruptly accelerates his involvement in agenda talks,” The Washington Post, 10-20-2021, <https://www.washingtonpost.com/politics/biden-agenda-democrats-spending/2021/10/20/cf88f12c-31b5-11ec-9241-aad8e48f01ff_story.html>)

For weeks, President Biden has met repeatedly with Democratic lawmakers as part of the tortuous negotiations over his agenda — but to the frustration of many, he has revealed few opinions of his own on what should remain in the plan and what should be jettisoned.

This week, however, Biden is doing something new: getting specific and plunging into details, telling lawmakers exactly what he thinks needs to go into the package that could define his presidency.

In private meetings with members of Congress this week, Biden outlined particular trade-offs, explaining for example that he wants universal prekindergarten care rather than free community college tuition, citing research that shows money spent on younger children has more impact.

He has floated the idea of giving seniors a debit card loaded with $800 to spend on dental benefits as part of an expansion of Medicare. He has revealed that he’s feeling pressure from his wife, Jill, who teaches at a local community college, to push for higher-education spending, joking that otherwise he would have to find somewhere else to sleep.

And Biden has stressed — several times — that lawmakers must help him show that democracies can tackle major problems, imploring them not to send him empty-handed to a pair of upcoming summit meetings.

“He was laying out what he wants,” said Rep. Debbie Dingell (D-Mich.), who met with Biden this week. “It was clear what he wanted — and it hasn’t been until now.”

Biden’s stepped-up involvement comes as a rapid succession of deadlines loom, including the expiration of federal highway funds Oct. 31, the president’s appearance at a climate summit in Scotland on Nov. 1, and a Virginia governor’s election that’s become a referendum on the Democratic agenda Nov. 2.

One White House official said that Biden has long been invested in the plan’s particulars but that different meetings with lawmakers have had different dynamics. The official, like several aides and lawmakers interviewed for this story, spoke on the condition of anonymity to be more candid.

However those working closely with Biden or familiar with his meetings say that the president is now more clearly setting guidelines for what should stay in his social-safety-net bill and what will have to go as it gets whittled down from $3.5 trillion to $1.9 trillion or less. These guidelines do not carry an ideological cast, the people said, but rather seem aimed at shaping a deal that can pass.

Biden, who often boasts of his knowledge of congressional workings from his 36 years in the Senate, appears to be gambling that his months of listening have given him the credibility to start imposing his will more.

In some recent meetings, Biden has acknowledged that the Clean Electricity Performance Plan, an ambitious but controversial part of his climate change agenda, probably will not be in the final bill. He noted that the child tax credit, which has nearly halved child poverty this year, will probably be extended only for one year.

During a meeting with lawmakers Tuesday, the president spoke at length, but he also went around the room to let lawmakers talk about the most important issues to them, two people with knowledge of the discussion said. “He knows the particulars inside and out, and he clearly is trying to be in closing mode for the deal,” said Rep. Mark Pocan (D-Wis.), who was at the meeting.

Pocan said that over the course of three meetings with Biden, including one via Zoom, he has seen what he termed a “progression.”

“It seems like a lot of this is starting to jell — like he’s got in his mind, at least, where this could be going,” Pocan said. “And very clearly yesterday, from all the conversations he had with all the different entities, he has a pretty good idea, I think, where he thinks it can go.”

After months when little progress was evident, top Democrats are now suggesting a breakthrough could be imminent. “I think we’ll get a deal,” Biden said as he prepared to board Air Force One for a trip to Scranton, Pa.

On Capitol Hill, Senate Majority Leader Charles E. Schumer (D-N.Y.) and House Speaker Nancy Pelosi (D-Calif.) are pushing to hammer out a framework this week.

Pelosi told her top lieutenants at a meeting Tuesday that she was aiming to finalize the outline of the package by Thursday night, people with knowledge of the conversation said. The speaker has also said she wants to hold House votes on the package by Oct. 31, or a week from Sunday.

Biden has been most vocal about the upcoming climate summit, where he will face more than 100 heads of state and wants to signal that the United States is leading the globe again on climate. He has frequently framed the international order as a competition between democracies and autocracies, and wants to show that a country such as the United States can tackle a complex problem like climate change.

“The president was very authentic and passionate in appealing to our patriotism,” said Rep. Ro Khanna (D-Calif.), who met with Biden this week. “He needs an agreement before going to Glasgow to lead on climate and to show that American democracy is capable of delivering.”

Khanna recounted a dramatic scene from the gathering. “He looked people in the eye and said the prestige of the United States is on the line,” Khanna told CNN.

The Glasgow summit represents a key moment in the world’s effort to combat climate change, a top Biden priority, as countries are expected to make ambitious commitments to reduce greenhouse gases.

Biden has committed to cutting U.S. emissions to 50 to 52 percent below 2005 levels by 2030. The aim far surpasses goals set by previous presidents, and climate experts say it is achievable — if most of Biden’s climate agenda passes.

On the other hand, if Biden cannot persuade Congress to pass much of his program, his credibility on the world stage would suffer, they say. “The world has grown skeptical of U.S. climate commitments, given our rather schizophrenic history,” said Paul Bledsoe, who served on the White House Climate Change Task Force under President Bill Clinton. “Other governments and industries overseas are very sophisticated — they understand the U.S. system, and they understand that legislation is more lasting than regulation.”

#### Legislative failure is fatal – perceived abroad as equivalent to pulling out of Paris again

Liptak et al 10-21 (Kevin Liptak, reporter covering the White House at CNN, graduate of the College of William and Mary; and Jeremy Diamond, White House correspondent at CNN, graduate of The George Washington University; “Biden sees American credibility on the line as he races to lock down climate action ahead of Glasgow,” CNN, 10-21-2021, https://www.cnn.com/2021/10/21/politics/climate-change-agenda-biden-administration-glasgow/index.html)

Still, one of the appeals of using the spending packages to tackle climate change is the difficulty in overturning laws, unlike executive actions or agency rules. People familiar with Biden administration thinking said the durability of new laws, opposed to rules, had been a priority as the President looks to restore American credibility on the issue.

Yet getting those laws passed has proven difficult, even with Democrats in control of the White House, Senate and House -- an alignment Biden, Democrats and climate activists all know could end after next year's midterm elections.

Administration officials are increasingly optimistic about the prospects of reaching an agreement on the reconciliation package before Biden leaves for the G20 and Glasgow summits next week, but it's clear officials are prepared to ramp up executive actions to fill the gap if necessary.

"We take executive action on a very regular basis," a senior official said when asked if more executive and regulatory action is on the table should legislation not come together ahead of the President's trip. "From day one, the way we've articulated our climate strategy is to leave no emissions reductions on the table. When we see opportunity, we chase after it."

Worries about a Scottish disappointment

Biden administration officials have been looking ahead toward the Glasgow climate talks for months, framing the summit as a critical moment to galvanize the world's attention toward the crisis. Biden has discussed plans for the gathering with its host, British Prime Minister Boris Johnson, and held his own virtual climate summit early in his presidency meant to propel other nations toward new carbon reduction goals.

Yet in recent weeks, concerns the summit could fall short of expectations have seeped into public view. Johnson himself said in an interview with Bloomberg the talks would be "extremely tough." Even Queen Elizabeth II, who is expected to attend part of the summit alongside other senior members of the royal family, was overheard voicing irritation at leaders who "talk" but "don't do" anything to combat climate change -- remarks interpreted as frustration at the potential for the Scotland summit falling short of expectations.

John Kerry, who -- as Biden's global climate envoy -- spent the past months traveling the planet in search of climate commitments, acknowledged last week the Glasgow conference could end without meeting its target levels for emissions cuts.

"By the time Glasgow's over, we're going to know who is doing their fair share and who isn't," he told the Associated Press in an interview. He was similarly bearish on the prospect of Biden arriving to the talks having not secured agreement on his climate proposals, comparing a failure to secure legislation to "President Trump pulling out of the Paris agreement, again."

"I'm not going to pretend it's the best way to send the best message," Kerry said.

Kerry's efforts run up against a mixed US record on climate change, one that fluctuates based on the which party is in power -- as it did when Trump took office and rolled back a slew of environmental regulations enacted by his predecessor.

# 2NR

### 2NR---Link

#### Biden gets the blame

Jeffrey Toobin 15, Senior Legal Analyst at CNN, “Obama’s Game of Chicken with the Supreme Court”, The New Yorker, 5/21/2015, http://www.newyorker.com/news/daily-comment/obamas-game-of-chicken-with-the-supreme-court?intcid=mod-latest

For many people, the President of the United States is the government of the United States. It’s why he gets the credit and blame for so many things, like the economy, where his influence can be hard to discern. This is particularly true for a subject in which the President has invested so much of his personal and political capital. If the Supreme Court rules against him, the President can blame the Justices or the Republicans or anyone he likes, and he may even be correct. But the buck will stop with him.

#### Court action is politicized and blamed on Biden. No cover.

Lindsay Harrison 5, Professor of Law at the University of Miami, “Does the Court Act as “Political Cover” for the Other Branches?”, Legal Debate, 11/18/2005, http://legaldebate.blogspot.com/

While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice hand picked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.

#### Congress closely watches the Court and will backlash to unpopular decisions

Dr. Alicia Uribe 13, Lecturer in Political Science at University of Illinois, PhD University of Washington St. Louis, “The Influence of Congressional Preferences on Legislative Overrides of Supreme Court Decisions”, Law & Society Review, <http://faculty.ucmerced.edu/thansford/Articles/congress_reaction_to_court.pdf>

Conclusion Congress and the Supreme Court interact in a separation-of-powers framework as each attempts to shape policy. While the broader congressional politics literature provides convincing empirical evidence that legislative preferences have a significant effect on Members’ votes and the passage of legislation (e.g., Poole and Rosenthal 2007), no systematic evidence demonstrates legislative overrides of Supreme Court opinions result from congressional preferences. This lack of empirical support exists despite the widespread application of a spatial modeling approach to understand Congress-Court relations, which assumes overrides occur when Court decisions are ideologically distant from Congress. Our first goal was to show, consistent with existing spatial models in the literature, that Congress is more likely to pass laws overriding Supreme Court decisions the further ideologically removed a decision is from the legislative gridlock interval. Our statistical results, for the first time, demonstrate Congress overrides Court decisions the further ideologically removed it is from them. A two standard deviation shift around the mean of the ideological distance of Congress from a Court decision increases the likelihood of an override by 66.4%. This result indicates Congress takes notice of the policy import of a Court decision and is more likely to reject those it dislikes on ideological grounds. We therefore provide evidence in support of a core part of SOP models, showing Congress does indeed respond to Court decisions based on its preferences. This result is important because it confirms a fundamental component of nearly all SOP explanations of the relationship between Congress and the Court. Future studies can now be confident that their assertion that legislative preferences influence overrides is on a strong empirical footing. We further demonstrate Congress does not act strategically by avoiding legislative overrides when the Court is likely to reject them. The implication is that Congress is motivated by position-taking goals rather than the ultimate effect of its policy actions and the separation-ofpowers. That is, our data suggest Congress cares more about the short-term gains from overriding legislation (e.g., passing the legislation for electoral purposes) than the ultimate shape of the policies it chooses to override. This result suggests the Court may, at least when it concerns the ultimate effect of override legislation, have greater influence on the ultimate location of public policy. Of course, this conclusion is tempered by the fact that Congress and the Court rarely disagree about whether the status quo should be altered; Congress wishes to override a Court decision preferred by the Court only 2.5% of the time in our data. As Dahl (1957) famously declared, the Court is not often out-of-step with the elected branches, and as a result Congress and the Court tend to agree on the desirability of previously decided Court cases. Finally, we show the effect of ideological distance matters for all types of Court decisions, including constitutional ones. Thus, while the Court may, as some suggest (e.g., King 2007), attempt to insulate its decisions from congressional override by using constitutional interpretation, it appears this tactic does not work. When Congress is ideologically distant from a Court decision, regardless of whether the decision is based on constitutional, statutory or common law interpretation, it is more likely to override it. This result is new to the literature, and it means subsequent studies cannot exclusively focus on statutory cases.