# NEG Wiki Doc---Harvard R3

# 1NC

## Off

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

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

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

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

**Business practices are ongoing conduct of many market participants**

**Macintosh 97** --- Kerry Lynn Macintosh, Associate Professor of Law, Santa Clara University School of Law, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, [Vol. 38:1465 1997], https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1691&context=wmlr

**\*\*Footnote 5\*\***

5. In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. § 1-205(2).

**Only per se rules bans a PRACTICE --- rule of reason regulate anticompetitive effects for individual acts**

**Stucke 09** --- Maurice E. Stucke, Associate Professor, University of Tennessee College of Law, “Does the Rule of Reason Violate the Rule of Law?”, University of California, Davis [Vol. 42:1375 2009], https://lawreview.law.ucdavis.edu/issues/42/5/articles/42-5\_Stucke.pdf

But who has created this predicament? The Supreme Court. Over the past ninety years, the Court has supplied the Sherman Antitrust Act’s legal standards. In determining the legality of restraints of trade, the Supreme Court generally employs either a per se or rule-of-reason standard.10 Under the Court’s per se illegal rule, certain restraints of trade are deemed illegal without consideration of any defenses. These restraints are so likely to harm competition and to lack significant procompetitive benefits that, in the Court’s estimation, “they do not warrant the time and expense required for particularized inquiry into their effects.”11 Under the per se rule, once a plaintiff proves an agreement among competitors to engage in the prohibited conduct, the plaintiff wins.12 But the Court evaluates all other restraints under the rule of reason. This standard involves a **flexible** factual **inquiry** into a restraint’s overall competitive effect and “the facts **peculiar to the business**, the history of the restraint, and the reasons why it was imposed.”13 The rule of reason also “**varies in focus and detail** depending on the nature of the agreement and market circumstances.”14 “Under this rule the fact finder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.”15 Despite its label, the rule of reason is not a **directive defined ex ante (such as a speeding limit).**16 Instead, the term embraces antitrust’s most **vague and open-ended principles**, making prospective compliance with its requirements exceedingly difficult.

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

**The plan is also extra topical---they fiat 'favoring structural remedies' which is not an increase in prohibitions but a change in how prohibitions are enforced---that's an independent voting issue because it justifies plan text planks to spike out of NEG offense.**

### 1NC – PTX

#### Biden’s PC is likely to pass climate spending – BUT sustaining focus and continuing to avoid tough votes for Manchin and Sinema is key

Cadelago et al 10-19 (Christopher Cadelago, White House Correspondent at POLITICO; Marianne LeVine, reporter at POLITICO, and Nicholas Wu, reporter at POLITICO; **internally citing White House aides, Sen. Jon Tester (D-Mont.), Rep. Pramila Jayapal, chair of the Congressional Progressive Caucus, John Podesta, top aide to former Presidents Barack Obama and Bill Clinton, and Louisa Terrell, director of the White House Office of Legislative Affairs**; “Biden bets his agenda on the inside game,” POLITICO, 10-19-2021, <https://www.politico.com/news/2021/10/19/biden-agenda-inside-game-516239>)

Before Joe Biden can fully pitch the public on his solutions to a lingering pandemic and economic rockiness, he’s got to finish the sale to his own party’s lawmakers.

As Democrats on Capitol Hill brace in anticipation of a brutal midterm, Biden is spending an extraordinary amount of time and political capital behind the scenes to convince them to rally around a common framework for social and climate spending. His congressional huddles have accelerated, from phone calls on the White House veranda to one-on-one and group meetings — including two high-stakes Tuesday sit downs with moderates and progressives. He’s dialing up old friends to take their temperature about how his presidency is really fairing far beyond the Beltway.

White House aides, in their own recent conversations with nervous allies, have repeatedly cited the flurry of presidential calls as a sign itself of Biden's commitment to getting the bills over the finish line, at times bristling at claims that he hasn't been involved enough.

But Biden’s hours and hours of meetings don’t just reflect the precarious moment in which his presidency finds itself. They underscore the heavy reliance his White House has placed on an inside game, rather than the bully pulpit, to dislodge recalcitrant holdouts and move their agenda.

"The president is a longtime policy guy and relationship guy. So he brings both kinds of skills to his work" to corral his party behind a trillion-dollar-plus package of progressive priorities, said Biden's former primary rival Sen. Elizabeth Warren (D-Mass.).

Warren acknowledged, however, that Biden's level of influence over Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — both of whom met with Biden on Tuesday — remains to be seen: "We'll know the answer to that when we make it across the finish line and assess what we’ve got."

Biden met Tuesday afternoon with Sens. Jon Tester (D-Mont.), Catherine Cortez Masto (D-Nev.) and Mark Warner (D-Va.), along with House progressives and moderates.

"We just need to get to a number," Tester said after returning from the White House. "I think that he likes all the programs but I think everybody's negotiable at this point."

Biden told progressives that tuition-free community college would likely be cut from the final package and the child tax credit may only be extended for a single year, according to a source familiar with the meeting.

Rep. Pramila Jayapal, chair of the Congressional Progressive Caucus, said after the meeting that tuition-free college is "probably going to be out," and certain climate priorities were "challenging."

"At this point we don't have a certainty on the final thing, but what we're hearing is good," Jayapal said. "We feel like the vast majority, if not all, of our priorities are in there, in some way, shape or form.”

As Biden has worked on lawmakers in private — sometimes not putting a hard stop on his schedule so as not to stifle progress — he’s largely, though not entirely, resisted riskier public pressure campaigns that could backfire and are viewed as against his nature.

Often, Biden has had just a single public event each day. Occasionally, there’s been no public interfacing at all. Eight times since Labor Day, the daily guidance issued by the White House has included only private meetings with Biden.

A planned barnstorming of the country to sell the Build Back Better platform this summer was overshadowed by the chaotic U.S. withdrawal from Afghanistan. And congressional uncertainty amid infighting among Democrats on opposite poles of the party has overshadowed continuing trips by Cabinet officials and commandeered the media narrative in Washington.

While Biden has held public events around the agenda, he has not done a formal press interview on it since Labor Day. On Wednesday, he will take a trip to his hometown of Scranton, Pa., to discuss the benefits of the legislative proposals, and on Thursday he will participate in a town hall broadcast on CNN.

“The President won the most votes in history running on his Build Back Better agenda, unveiled the formal proposal in his first address to a joint session of Congress, and has made his case across the country ever since – along with his cabinet – which is deeply resonating with the American middle class," White House spokesman Andrew Bates said.

Over the weekend, Biden called Sen. Bob Casey (D-Pa.) to discuss the upcoming trip, according to the senator, who is working on expanding care for older people and people with disabilities.

“He wanted to get some suggestions about issues we should focus on, while we’re there,” Casey said.

Still, inside the White House, the lower-key strategy has been seen as a necessity: Democrats have such slim congressional majorities that Biden, Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi have essentially no margin for error. That has put far more of the president’s focus on convincing a relatively small number of lawmakers to agree to details of the package, rather than using his time to sell policies that the general public supports.

Chief among that small number of lawmakers are Manchin and Sinema, who remain resistant to the range of $1.9 trillion to $2.2 trillion that Biden and progressive lawmakers have discussed as a compromise top line for the social spending bill.

"I'm told that they've given signs on the parking spaces for these two senators at the White House, that they're there so often,” Senate Majority Whip Dick Durbin (D-Ill.) said of Manchin and Sinema. “This president has been engaged from the start, in working with all the leaders, and particularly with those two senators."

As he does that, Biden has labored to project a sense of optimism about his progress. White House officials say they’re encouraged by what they described as the accelerated pace of the talks, even as the Oct. 31 timetable appears exceedingly ambitious.

Another explanation for the approach was baked in long ago. Biden is a 36-year veteran of the Senate with a heightened sense of his own negotiating instincts and abilities to move major legislation through the chamber. A self-admitted schmoozer, he has avoided doing much to shame Manchin and Sinema, preventing many details from their conversations and about his own preferences from spilling into public view.

“There’s a lot of complaining about what the message has been on this package, but when you’re trying to fight for every vote, the coverage inevitably becomes about the process and numbers,” said John Podesta, a top aide to former Presidents Barack Obama and Bill Clinton and a major climate activist. “When you are inside talking one-on-one to members trying to convince people to stay with you or come on board it’s very hard to create a press environment which is different from what they’ve got.”

Biden has resumed his in-person meetings with Congress’ return to Washington, including Tuesday sit-downs that involved Vice President Kamala Harris and Treasury Secretary Janet Yellen. There's a deepening acknowledgment that he has to hurry.

“They really are now in a circumstance where they will take on more and more water unless they can close the framework,” Podesta added. “I think they’ll do it. But it’s not like they have forever. We’re talking about this week or next week.”

In his meetings, Biden has spent a considerable amount of time on the party’s collective sense of urgency, aides and allies said, telling members of his party that they simply have to deliver. The conversations have at times been crisp, with Biden telling some Democratic skeptics that in order to be part of the negotiating process, they need to articulate policies that they are for and not just what they oppose — a message similar to the one Sen. Bernie Sanders (I-Vt.) has delivered to Manchin and Sinema.

Biden’s goal has been to help establish broad areas of agreement before filling in the specifics. At the same time, Biden has repeatedly cautioned his senior aides and officials not to rely on generalizations, and to prepare recommendations based on data and input from the lawmakers about their states and districts.

He has stolen bits of face time with lawmakers wherever he can, keeping members back after bill signings, for example, to sound them out, and gathering with them in their districts when he’s been on the road. Moving beyond sticking points has been a challenge, and Biden is known to implore lawmakers to step back and ignore a particular area and to temporarily focus on others where they might be able to make progress.

“When you see him artfully and deftly manage these hard conversations with members and guide them into a productive place, it helps remind you there is room for optimism and there is a pathway here,” said Louisa Terrell, director of the White House Office of Legislative Affairs.

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

Carstensen ‘21

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

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

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

#### PC’s key to Glasgow success

Glasser 10-28 (Susan B. Glasser, staff writer at The New Yorker, founder and former editor of Politico Magazine, former editor-in-chief of Foreign Policy, graduated from Harvard University, “Biden Can’t Quite Close the Deal—with His Own Party,” The New Yorker, 10-28-2021, https://www.newyorker.com/news/letter-from-bidens-washington/biden-cant-quite-close-the-deal-with-his-own-party)

On Thursday afternoon, Pelosi spoke to reporters after the House Rules Committee released the 2,465-page text of the budget bill that progressives had been demanding to see. The Speaker was no longer mentioning a vote before Biden’s plane landed in Rome. “We’re on a path to get this done,” Pelosi said. “We’ll see what consensus emerges from that, but we’re really very much on a path. . . . We’re on a path to get this all done.” Pelosi was then asked whether she trusted the word of Manchin and Sinema enough to move ahead with both bills. “I trust the President of the United States,” Pelosi replied. As she left the press conference, Pelosi was asked one more time: Are you holding an infrastructure vote today? She did not answer.

By next week, this could be just another forgotten congressional dumpster fire. The agonizingly slow negotiations on Biden’s agenda over the last few months are not the first time and will not be the last that the legislative sausage-making process has left legislators feeling, as Representative Debbie Dingell put it, “sick to your stomach.” Biden and Pelosi are betting on some basic principles of politics to help smooth it all over. They are betting that the memories of the enervating process, like a painful childbirth, will fade with time. They are betting that delivering something is better than delivering nothing. And they are betting that the mechanics of passing the legislation are much less significant than the politically popular proposals, such as raising taxes on wealthy corporations and child-care tax credits, contained within the bills. The House progressives quickly put out a statement saying that, while they were balking at having an infrastructure vote on Thursday, they were, in fact, committed to supporting both that bill and the bigger social-spending bill—whenever they do come to the floor. Winning tends to erase the pain of getting there.

But what I keep coming back to is that Biden has struggled so much—and had to put so much of his personal prestige and political capital on the line—for a deal he can’t quite close with his own party. These are Democrats he is negotiating with. No Republicans—or Russians or Chinese, for that matter—were involved in the making of the deal, to the extent that there is a deal. And why, exactly, was it such a heavy lift that it took so long to get to the pretty inevitable top-line number? A month ago, the big breakthrough was the revelation that Manchin was for a $1.5-trillion bill and that Biden and the Democratic leadership wanted to get to approximately two trillion dollars. It did not take a negotiating genius to figure out that they were going to end up at $1.75 trillion. This is what practically broke Washington? You can’t blame that one on Donald Trump.

In 2020, Biden campaigned as a dealmaker—not a Trump, I-could-sell-you-the-Brooklyn-Bridge-type dealmaker, but an actual Washington-insider-who-can-make-this-town-work-again-type dealmaker. This is why the stakes for him now are so high. It’s become a basic test of his ability to deliver.

In a speech from the White House before he left for Europe, Biden made a final appeal that was more or less a plea to his party to pivot—at last—to governing. “No one got everything they wanted, including me,” he said, of the framework, “but that’s what compromise is. That’s consensus, and that’s what I ran on.” It is also, he added, “the only way to get big things done in a democracy.”

Biden, as I write this, is flying on Air Force One to Europe, on only his second trip abroad as President. He faces skeptical Europeans, who are still peeved about the messy American withdrawal from Afghanistan, and skeptical Chinese, with whom he must try to negotiate so that the cop26 climate-change gathering in Glasgow does not result in the abject failure many are predicting. But there is little doubt that Biden’s ability to lead in the world is directly tied to his ability to lead at home. Failure on one front is failure on both. So the question remains: “Are we going to vote and demonstrate that we can govern,” as Representative Elissa Slotkin put it, “or not?”

#### Glasgow’s the only way to avoid existential climate change

--NDC = “nationally determined contributions” (to net zero global emissions by 2050) = the “ratchet mechanism” where NDCs should increase each conference

--broadly, yes political will among developed countries, esp. China, already on board net zero

--political will in developing countries is explicitly conditional on Biden’s ability to pass climate finance provisions in the social infrastructure bill

--Biden’s ability to showcase credible policies to achieve an ambitious NDC + financing drives up everyone else’s NDCs sufficient to achieve 1.5 deg track

--1.5 deg key – each incremental increase above that exponentially increases existential risk – IPCC report

--not too late, Glasgow specifically is the last chance – IPCC report

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

### 1NC – Section Five

#### 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 a worker welfare standard and mandate the utilization of the ABC test to make those determinations. The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

#### The FTC should write an opinion announcing that Intel’s conduct did not violate Section 5.

#### The counterplan solves and competes---the FTC interprets current authority without creating new prohibitions.

Khan ‘21

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

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

I. Background

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

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

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

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

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

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

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

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

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

#### The ABC test solves

1AC Kim ‘20

THEIR AUTHOR - Eugene K. - J.D. 2020; Yale College, B.A. 2016. “Labor’s Antitrust Problem: A Case for Worker Welfare” The Yale Law Journal. 2020. #E&F – modified for language that may offend - https://www.yalelawjournal.org/pdf/130.2Kim\_q1s8bt8t.pdf

This Note proposes two mechanisms for applying the ABC test to collective bargaining, one involving guidance from federal antitrust agencies, and the other involving state legislatures. The focus on federal agencies stems from the fact that both the DOJ and the FTC play major leadership roles in coordinating state antitrust-enforcement activities and leading national investigations, and they have themselves been involved in various actions against organized labor. The focus on state legislatures stems from the fact that many states have already adopted the ABC test within the employee-benefits context through legislation, evidencing political will within certain states for protecting a greater number of workers.

The proposal notably excludes judicial action. While courts are capable of catalyzing policy shifts, as exemplified by the California Supreme Court's decision in Dynamex, statutory enactments and, to a lesser extent, agency action have the benefit of bearing the imprimatur of democratic will, and both can ~~speak~~ (articulate) with greater general applicability than judicial decisions, which arise out of individual fact patterns. Further, federal courts would be building on an antitrust jurisprudence that has left little room for independent contractors to organize.136 Legislatures and agencies may have more freedom to shape policy changes and pursue worker welfare137 in a way that respects original intent and maximizes aggregate social welfare.

The following two Sections address agency guidance and state legislation in turn. Each Section outlines the basic proposal, and then proceeds to justify the proposal and discuss its implementation and feasibility.

B. Federal Agency Guidance

1. The Proposal

The federal antitrust agencies — namely, the Bureau of Competition at the FTC and the Antitrust Division of the DOJ —should issue a joint guidance document (in similar fashion to the jointly issued Horizontal Merger Guidelines), stating that prosecution of employee organizations is not a priority for the agencies. To accommodate evolving notions of labor within the gig economy and elsewhere, both agencies should use a definition of employee based on the ABC test to clarify that workers who are nominally independent but resemble em-ployees in several key ways are unlikely to be subjected to antitrust scrutiny. One sample guidance document is provided in the Appendix, which outlines the ABC test and contextualizes it in statutory text, legislative history, and modern developments in the labor market.

Under the current state of the law, the federal government has investigated and litigated against numerous workers' associations, claiming that these associations are engaged in collusive or otherwise anticompetitive activity.138 These groups range from associations of public defenders seeking higher compensation,139 to physicians jointly dealing with insurers,140 to truck drivers seeking better pay and work conditions.141 In many of these cases, organizing activities have been enjoined and participants subjected to agency supervision.142 An agency policy based on the ABC test would not foreclose all of the actions agencies have historically brought against workers' organizations, but it should fore-close most actions that are inconsistent with the concern for worker welfare underlying the antitrust laws. Consider, for example, North Texas Specialty Physicians, which addressed an agreement by independent physicians regarding how they would negotiate payments with payors (like insurance companies, health maintenance organizations, and preferred provider organizations).143 Agencies would still have leeway to prosecute these sorts of actions because independent doctors are probably not considered employees under the ABC test:

they control their own work; to the extent they are hired by patients, they do a different type of work than the patient; and they are engaged in an independently established trade. On the other hand, consider the recent FTC action against a group of port truck drivers who had organized and initiated work stoppages to contest sub-minimum-wage pay and long hours.144 These actions are more questionable under the proposed guidance, given that the drivers lack control over crucial aspects of their job, such as pay and conditions of work.145 Distinguishing workers' organizations based on these factors — in particular, the extent of hirer control — serves the normative goals of the framework introduced in Part I. From an economic perspective, efforts by physicians to organize should be subject to greater scrutiny because they tend to be more regressive than efforts by truck drivers to do the same. From a legislative-history perspective, if the purpose of the union exemption is to allow workers to balance disparities in bargaining power, the extent of control that workers have over their work should be a decisive factor in determining whether to extend the antitrust exemption.

2. Normative Justification

Even if workers' organizations have ambiguous or negative effects on consumers, the fact that they enhance worker welfare is an independent reason to enable them, in light of both the exploitation that many workers face due to concentration in capital, as well as the concern for labor expressed through statutory text and legislative history. Although worker organization can have marginally negative effects on employment, studies have shown that unionization can have significant positive effects on wages and working conditions for union and nonunion workers alike, leading to a net positive effect on worker welfare.146

Using the ABC test fulfills the redistributive aims of the worker welfare standard by focusing the exemption on workers who lack bargaining power within the work relationship. While the common-law distinction between independent contractors and employees reflects differences in worker control, it also masks variation in bargaining power that can exist within each context. Certain employees, by virtue of their profitability to the firm, unique skills, or industry connections, may have much greater bargaining power in interactions with their managers and be subject to less stringent control than certain independent contractors, who in turn have freedom over certain aspects of their work but are still subject to their hirer's control in fundamental aspects of their work. As discussed above, Uber drivers, while arguably independent contractors, have their rates set by Uber, must comply with certain service standards, and may be excluded from the platform if their ratings are too low.147 These aspects of control make them more similar to employees than other types of independent contractors, as recognized by tribunals and agencies outside the United States.148 Justice Douglas expressed a similar concern about the existing independent-contractor classification in his dissent in Los Angeles Meat & Provision Drivers Union v. United States, where he wrote, referencing Hearst Publications:

We noted that numerous types of "independent contractors" had formed or joined unions for collective bargaining—musicians, actors, writers, artists, architects, engineers, and insurance agents. We pointed out that there were marginal groups who, though entrepreneurial in form, lacked the bargaining power necessary to obtain decent compensation, decent hours, and decent working conditions. We emphasized that "the economic facts of the relation" may make it "more nearly one of employment than of independent business enterprise with respect to the ends sought to be accomplished by the legislation."149

Hearst Publications, since superseded by statute as it applies to the NLRA and labor law, serves as a reminder that labor lies along a spectrum and may still guide our analysis of antitrust law. Even if one is skeptical about shielding all worker organizations from antitrust liability, the common-law definition of employee is not necessarily the best way to draw the line. By expanding protections to a greater number of workers who have limited control over their working conditions, the proposal would enable workers to organize in a way that is consistent with the original intent of the labor exemption.150 Rather than seeking to protect workers of a particular legal classification, the original proponents of a labor exemption saw it as a way to balance inequities in bargaining power and equip labor to counteract the consolidation and dominance of capital.151

As a matter of statutory text, section 6 of the Clayton Act, the original source of the labor exemption, does not distinguish between types of workers.152 Further, section 13(c) of the Norris-LaGuardia Act—which defines the term "labor dispute" — covers workers that do not "stand in the proximate relation of employer and employee," thereby reflecting an interest in broadening coverage beyond a particular legal relation.153

As a policy matter, enabling a greater number of workers to organize — and in particular, those workers who do not fulfill one or more prongs of the ABC test—serves society's interests in welfare maximization and horizontal equity. The argument for the former is the same as presented earlier: union activity enables workers at lower income levels to fight rent-extractive behavior from consolidated firms, leading to a net social welfare gain.154 Enacting the ABC test promotes horizontal equity insofar as it enables workers who perform similar forms of work to be treated similarly under antitrust law, even if legal relationships with their hirers may be structured differently. Under a common-law approach, a group of taxi drivers may be allowed to organize if they seem to be employees (e.g., they work fixed hours and wear a uniform), but forbidden if they are hired on an ad hoc basis as independent contractors. If both types of workers do similar work and are subject to similar levels of control on other factors like wage and termination, it is worth reconsidering why one type of worker should be allowed to organize while the other is not.

3. Implementation

Given that agencies have nearly nonreviewable discretion over which cases to pursue,155 an agency commitment to deprioritize labor antitrust suits can be easily implemented. This is especially true within the antitrust context, where statutory requirements are sparse. For example, many scholars and jurists see the Horizontal Merger Guidelines, which are formally non-binding, as a foundational framework for merger review and litigation.156 If the agencies decide that workers' associations are not an enforcement priority and invest fewer resources into investigating those associations, antitrust litigation against workers' associations would diminish significantly. The remaining source of litigation would be private legal actions, but those are addressed by the state legislation proposed below.

Guidance is easier to issue than legislation is to enact, given that the procedural requirements to issue guidance are significantly less onerous than bicameral presentment. While antitrust agencies have voluntarily adopted heightened procedures for certain guidance documents, most notably the Horizontal Merger Guidelines,157 even these procedures are much more lenient than the legislative process, which subjects proposals to strict vetogates.158 To ensure that the policy can be issued as a guidance document and not a legislative rule that requires notice and comment, any such policy should avoid mandatory language, which can suggest to courts that a guidance document is actually a legislative rule.159

#### No rollback---ruling in favor of Intel in a different case makes Section 5 usage look restrained.

(1AR) Crane ‘10

Daniel A. Crane - Professor of Law, University of Michigan. “Reflections on Section 5 of the FTC Act and the FTC's Case Against Intel” - The CPI Antitrust Journal (Competition Policy International) – February, 2010, (2) – modified for language that may offend - #E&F - https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2369&context=articles

IV. A MARBURY V. MADISON STRATEGY FOR THE INTEL CASE

For the reasons set forth above, the Intel action raises serious risks of setting back the FTC’s antitrust enforcement powers. Certainly, the Commission risks losing the matter in a probusiness appellate court46 or the Supreme Court during a time of economic trouble when antitrust cases are historically difficult for the Government to win.47 But the risk goes far beyond losing this individual matter. There is a very real risk that an appellate court will write an opinion rebuking the Commission for asserting independence from the Sherman Act, thus setting a precedent that could constrain the Commission’s enforcement mission for years to come.

Nonetheless, there is a way forward that could turn Intel into a victory for the Commission’s enforcement power. It is what I will call a Marbury v. Madison48 strategy. Should the Commission conclude that Intel’s conduct did not violate Section 5, it could nonetheless create a precedent for more expansive enforcement powers in the future. Indeed, such an opinion could work to the Commission’s long-run advantage, since it would be insulated from immediate and potentially hostile appellate review—just as Marbury created a long-run victory for judicial power even while deciding against judicial power on the narrow facts of that case.

To provide a very abbreviated recap on Marbury, early during the Jeffersonian period, Chief Justice Marshall faced a dilemma: Although he wanted to affirm in principle the power of judicial review of acts of Congress, he risked seriously damaging the Court’s long-run effectiveness and prestige by striking down an act only to have the newly elected Jeffersonians, who were hostile to the Federalist Supreme Court, disregard the Court’s decision.49 Hence, Marshall wrote an opinion that at once declared Madison’s refusal to deliver Marbury’s commission illegal, but also the Judiciary Act unconstitutional insofar as it assigned a mandamus power, a species of original jurisdiction, to the Supreme Court. The upshot was that the Court declined to issue the writ of mandamus sought by the Federalists, even while affirming the power of the Court to strike down an Act of Congress. Though hostile to the Court’s assertion of the power of judicial review, the Jeffersonians were impotent to challenge the decision since it left the status quo undisturbed and denied the Federalist justices of the peace their commissions. In the long run, establishing the principle of judicial review proved far more lasting a victory for the Federalist view of judicial power than winning the narrow skirmish over justice of the peace commissions.

The FTC could pursue a similar strategy here by writing an opinion announcing a broad ~~view~~ (perspective) of its Section 5 powers and independence from the Sherman Act, even while finding in favor of Intel and thus avoiding an immediate and probably hostile judicial reaction. Such an opinion would demonstrate the FTC’s self-control over its enforcement powers and assuage concerns that divorcing Section 5 from the Sherman Act would lead to unchecked administrative discretion and an abandonment of the “rule of law.” The opinion could announce a framework for future judicial review of Section 5 decisions—perhaps announcing a set of limiting principles for independent Section 5 challenges along the lines of those proposed above. In the future, courts might be much more inclined to respect the Commission’s views on Section 5 if it had previously articulated a self-disciplining set of limitation principles and censured itself without the need for judicial intervention.

### 1NC – Error Rates

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

**Rosch ‘10**

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

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

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

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

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

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

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

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

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

### 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 – ConCon

#### Text: Pursuant to Article V of the Constitution, at least two-thirds of the States should call a limited constitutional convention and at least three-fourths of the States should ratify a constitutional amendment that prohibits private sector business practices that violate an antitrust worker welfare standard.

#### The CP builds support through consensus – key to social change and avoids the rollback DA to the aff

Vermeule 4 [Adrian, Professor of Law – Harvard Law School, “Constitutional Amendments and the Constitutional Common Law,” Public Law and Legal Theory Working Paper No. 73, University of Chicago Law School, September, <http://www.law.uchicago.edu/files/files/73-av-amendments.pdf>]

Decision costs and benefits

We must account for the costs of decision making as well as the quality of decisions. A simple view would be that the formal amendment process is too costly to serve as the principal means, or even as an important means, of constitutional updating, just as periodic constitutional conventions are too costly to be practical.

Dennis Mueller denies this view. He suggests instead that the decision costs of the formal amendment process are decision benefits:

The U.S. Constitution contains broad definitions of rights, and the task of amending their definitions to reflect changes in the country’s economic, social and political characteristics has been largely carried out by the Supreme Court. While this method of updating the Constitution’s definition of rights has helped to prevent them from becoming hopelessly out of date, it has failed to build the kind of support for the new definitions of rights that would exist if they had arisen from a wider consensual agreement in the society. The bitter debates and clashes among citizens over civil rights, criminal rights and abortion illustrate this point. . . . Although [alternative procedures for constitutional amendment] may appear to involve greater decision-making costs, they have the potential for building consensus over the newly formulated definitions of rights.82

On this view, it is an illusion that constitutional common law incurs lower decision costs in the long run, even if a given change may be more easily implemented through adjudication in the short run. Although at any given time it is less costly to persuade five Justices to adopt a proposed constitutional change than to obtain a formal amendment to the same effect, the former mode of change incurs higher decision costs over time, because common-law constitutionalism allows greater conflict in subsequent periods.

A benefit of formal amendments, then, is to more effectively discourage subsequent efforts by constitutional losers to overturn adverse constitutional change. Precisely because the formal amendment process is more costly to invoke, formal amendments are more enduring than are judicial decisions that update constitutional rules;83 so losers in the amendment process will less frequently attempt to overturn or destabilize the new rules, in subsequent periods, than will losers in the process of common-law constitutionalism. This point does not necessarily suppose that dissenters from a given amendment come to agree with the enacting supermajority’s judgment, only that they accept the new equilibrium faute de mieux.

Obviously more work might be done to specify these intuitions, but it is at least plausible to think that the simplest view, on which formal amendments incur decisionmaking costs that exceed their other benefits, is untenably crude. The overall picture, rather, is a tradeoff along the following lines. Relative to common-law constitutionalism, the Article V process requires a higher initial investment to secure constitutional change. If Mueller is right, however, constitutional settlements produced by the Article V process will tend to be more enduring over time than is judicial updating, which can be unsettled and refought at lower cost in subsequent periods.

## Inequality

### top

#### 1-They can’t solve inequality – tons of alt causes and it’s inevitable

-Trade Liberalization -Automation -Technology -manufacturing collapse -education -healthcare -minimum wage -less powerful unions - climate change

**Bhatt et al 2020 (**Anjali, Melina Kolb, and Oliver Ward. Assistant Professor in the Organizational Behavior Unit at HBS and a Fellow at the Santa Fe Institute for the study of complex adaptive systems. Melina Kolb is Assistant Vice President for Digital Communications at Peter G. Peterson Institute for International Economics. “How to Fix Economic Inequality?” <https://www.piie.com/microsites/how-fix-economic-inequality> first published on November 17, 2020 and last updated December 17, 2020, MSU-MJS)

Technology and trade are factors, but policies determine outcome. Automation and trade liberalization have profoundly transformed labor markets across advanced economies, giving disproportionate advantages to highly skilled and educated workers, and research shows these forces have played a role in widening inequality. But it is important to emphasize the role of governments in mitigating these effects. The United States and Europe have very different levels of inequality despite similar levels of technological change and trade liberalization. Divergent policies among countries must logically have influenced their disparities in the growth in inequality. Figure 14: Imports from emerging-market countries as percent of GDP, 1988–2014 Trade data show how the United States and many European countries have increased their imports from emerging-market countries at similar levels since 1980, suggesting factors other than trade are influencing differences in inequality levels. How have technology and globalization widened inequality within the United States? Economists generally think globalization has contributed marginally to rising US wage inequality but that technology has played a much bigger role. For the last half century, the United States has generated tremendous economic growth and wealth as a result of technological innovations and international trade and investment. Tech giants emerged with the advent of the internet. Businesses tapped global supply chains, technology breakthroughs, and international markets to expand their reach, turning some into multinational powerhouses, generating high-end jobs, and making a whole new range of products affordable for consumers. But some workers have lost out. US industrial production is still at historically high levels, but automation makes that achievement possible with far fewer workers. The US economy, like many advanced economies, has been driven more by services (information, business and professional services, health care, restaurants, travel, financial services) and less by manufacturing, with consumers spending a smaller percent of their incomes on manufactured goods than they used to. Figure 15: Percent of US employment in manufacturing vs. nonmanufacturing industries, 1939–2019 Manufacturing as a share of total employment has been in decline since the 1940s. Technology has reduced demand for certain low- and middle-wage workers, such as in factory assembly lines, and increased demand for high-skilled, higher-paid workers. To cut costs and stay competitive, many businesses outsourced manufacturing production from domestic factories to countries like China, Vietnam, and Mexico, displacing some domestic manufacturing jobs. (A Peterson Institute study finds about 156,000 US manufacturing jobs were lost on net each year between 2001 and 2016 from expanded trade, or less than 1 percent of the workers laid off in a typical year).1 Men and workers without a college degree have been hardest hit, especially in factory towns outside major US cities. Many of these workers have dropped out of the labor force. By contrast, highly educated and skilled workers, particularly in urban areas, earned a premium. Learn more about the effects of trade and investment in this guide, “What Is Globalization?” Governments have cut top tax rates. Tax policy is one of the most important factors in determining inequality levels in advanced economies. Taxes in the United States and many other rich countries have become less progressive in the past 50 years, meaning that tax obligations have declined for those with the highest incomes. The top earners used to pay much higher tax rates on their income than they do now. Less progressive taxation has accelerated the growth of top incomes. Figure 16: Average tax rate by pretax income group in the United States The average tax rate paid by the top 1 percent of US earners has steadily declined over many decades; since 2010, the highest-earning individuals have been paying an average tax rate roughly equal to or even less than other Americans. (Income levels of taxpayers do not account for government transfers). Figure 17: Top marginal income tax rate, 1900–2020 In the 1950s, the top US marginal income tax rate was above 90 percent, a legacy of the war-footing economy of World War II. It is now just below 40 percent. (In the United States, the top marginal tax rate is charged only on earnings above $510,000 for an individual). Other countries, like Japan and France, had similar declines. Figure 18: Change in top marginal tax rate vs. change in share of income held by top 1 percent since the 1970s As top marginal tax rates have declined in many richer countries, the share of income going to the top 1 percent of earners has grown. Countries like Germany, Spain, Denmark, and Switzerland cut top tax rates by little or not at all, and also experienced little to no increase in top income shares. Poor Americans are much less likely to attain higher education than rich Americans. In the United States, 90 percent of children with parents in the top 10 percent of the income distribution will likely attend college. For children with parents in the poorest 10 percent, less than a third will. American families are more burdened by college tuition costs than families in Europe, where higher education is more likely to be free or subsidized. US college tuition for four-year institutions has risen five-fold since 1985, adjusted for inflation, reaching $27,000 a year on average in 2017. US children today are less likely to exceed their parents’ standard of living because education levels are failing to grow at the rate required to meet the demand for a more educated workforce. Healthcare in the United States is not universal. The United States is the only wealthy nation without universal health coverage. Healthcare expenditures grew from 5 percent of GDP in 1960 to almost 18 percent in 2018. Americans spend more than double on healthcare per person than other wealthy countries on average, many of which have some form of publicly funded healthcare system, yet the country lags on many health outcomes such as life expectancy and infant mortality. In 2018, 8.5 percent of people, or 27.5 million, did not have health insurance at all (though the Affordable Care Act made some headway in reducing the number after 2010). Employers that provide health benefits to workers shoulder the costs of rapidly rising insurance premiums. The US federal minimum wage has fallen. The US federal minimum wage, currently $7.25 an hour, has dropped by almost 30 percent since the 1960s when adjusted for inflation. More than half of US states have set higher minimum wages but the rest have not. France’s minimum wage grew more than 80 percent between 1980 and 2016 when adjusted for inflation, to almost €10 or nearly $12 an hour. Unions are less powerful than they used to be. Union membership has long been declining across rich countries, especially in the United States. In the 1950s, approximately one-third of all US workers belonged to a union. In 2019, that figure was just 10 percent. Most European countries still have much higher shares of workers in unions than the United States. Some European countries (Germany, for example) also have employees on corporate advisory boards or board seats that can be reserved for trade unions, increasing their influence over wages and workplace regulations. Americans are moving less often while cities attract high-paying jobs. In the past three decades, the share of the US population making an interstate move fell by half, limiting the ability of families to pursue new job opportunities in response to declines in manufacturing jobs. It’s not clear why mobility fell, but rising housing prices in areas of opportunity may be a factor. In cities, wages for highly educated workers grew faster than for the less educated, widening the income gap between urban and nonurban areas. The economic fallout from the COVID-19 pandemic has disproportionately harmed already vulnerable groups. Low-income workers, minorities, and women are among those who have suffered the biggest economic losses. (See Section 5) Climate change hits the poorest the hardest. Extreme weather patterns attributed to climate change are widening inequality. Low-income groups tend to be more exposed to environmental threats, like flooding, hurricanes, and heat waves, and live in communities without effective disaster relief strategies. Additionally, certain policy responses to limit the climate crisis could disproportionally affect low-income workers. An example is the French government’s attempt to implement a fuel tax, which provoked street protests throughout the country.

**2-No empirical or statistical evidence that antitrust decreases inequality**

Jonathan **Klick** **et al. 19**—University of Pennsylvania Law School, Erasmus School of Law; Elyse Dorsey, Adjunct Professor at Antonin Scalia Law School; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Jan Rybnicek, Freshfields Bruckhaus Deringer LLP. ("Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust," January 9, 2019, from George Mason Law & Economics Research Paper No. 18-29, Arizona State Law Journal, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3249524)

On the whole, the relationship between the enforcement metrics and consumption is **comparable** for the households in both the **first and fifth income quintiles**. There is not much **empirical evidence** to substantiate the proposed correlation between antitrust enforcement activity and inequality. And certainly not evidence **significant enough** to justify the aggressive policy proposals recently injected into discussion of competition policy.

Stepping away from this aggregate analysis for a moment, it is interesting to note that the new(-old) focus on “big is bad” when it comes to inequality ignores an impressive literature on the effects of one of the biggest players in the US in recent decades – Walmart. Work by Jerry Hausman and Ephraim Leibtag shows that when Walmart Supercenters enter a market, food prices paid by consumers in the market drop by about 3 percent, and because they have detailed longitudinal data on household expenditures, they are able to estimate household welfare effects due to this price decrease. They find that the welfare effects are **substantial** and they are most pronounced for those at the lower end of the socio-economic spectrum.158 In addition to this price effect, David Matsa shows that Wal-Mart’s entry into a market induces competitor supermarkets to improve the quality of their service so as to avoid losing even more business to Wal-Mart and its lower prices.159 Thus, in the posterchild case for big is bad, the behemoth Wal-Mart would appear to improve inequality by its very existence.

Although we believe **consumption** is the most relevant measure for assessing the welfare effects (in absolute or, as here, in relative terms) of antitrust policy, we provide similar analyses of **income** and wealth. Using Census data,160 in Table 6, we again provide estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

As with consumption measures, there is generally **no statistically significant effect** (individually or jointly) of current or past investigations (regardless of whether we focus on merger-specific or total investigations) on the **income** shares of those at the **bottom or the top** of the income distribution. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, current investigations have the **opposite effect**. Further, many of the investigation coefficients are **positive for the fifth quintile** income share as well. If we examine **combined ratios of the shares** as we did with the consumption data, we still find **no support** for the assumption that an increase in antitrust enforcement has **any systematic effect on inequality**.16

#### 3 - Econ’s resilient and no war

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

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

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

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

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

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

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

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

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

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

**4 - Inequality has zero effect on war or nationalism**

Gal **Ariely 15**, senior lecturer in the Department of Politics & Government, Ben-Gurion University of the Negev, PhD from the University of Haifa’s School of Political Sciences, “Does National Identification Always Lead to Chauvinism? A Cross-national Analysis of Contextual Explanations,” Globalizations, 2015, https://s3.amazonaws.com/academia.edu.documents/43980028/Ariely\_Globalizations\_2015.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1515397197&Signature=78lnbbHNRVjhLgOKyRPKm%2BK8M1o%3D&response-content-disposition=inline%3B%20filename%3DDoes\_National\_Identification\_Always\_Lead.pdf

With respect to internal explanations, the effects of income inequality and ethnic diversity are presented in Table 3. Models 3.1 and 3.2 indicate that **neither directly affects chauvinism**. H4 is therefore not supported. The results suggest, however, that **both have a negative effect on** the **national-identification slopes. Contrary to our expectations,** countries with higher levels of economic and ethnic division appear to exhibit a **weaker relation between national identification and chauvinism**. While these findings might seem to contradict H5, the pattern was caused by outliers. After excluding South Africa—the most unequal and ethnic diverse country in our sample—the effect of ethnic diversity is not even of borderline significance. After excluding Chile—the most unequal country in our sample—**the interaction effects for economic inequality were also far from significant**.

The results, therefore, do not support H5.21¶ Conclusions¶ During the historic phone call between President Obama and Iranian President Sheikh Hasan Rouhani in September 2013, the latter stated that his country’s nuclear program ‘represents Iran’s national dignity’.22 This declaration reflects the common perception that Iran’s nuclear program mobilizes Iranians in support of resisting further national humiliation at the hands of foreigners (Moshirzadeh, 2007). This reflects the important role national feelings play in the contemporary international arena. Evidence from other examples—such as the Israeli-Palestine conflict—indicates that national identity serves as a key factor in conflict resolution. The prominence of national feelings is not limited to the Middle East, their effect on public attitudes towards international issues, and conflicts also being manifest in the West (Billig, 1995; Kinder & Kam, 2010).¶ It is thus hardly surprising that scholars seeking to develop a better understanding of conflicts adopt a social-psychology perspective, replacing the **deterministic view** that identification with one’s in-group **necessarily** leads to antagonism towards out-groups with an **examination of the broader social context.** In line with this approach, the present paper focuses on the way in which political and social contexts encourage chauvinistic views towards the international arena and how they affect the relation between national identification and chauvinism.¶ Integrating various social and psychological theories, we investigated two external contextual explanations (globalization and conflict) and an internal explanation (social division). Employing cross-national survey data, we examined the relation between national identification and chauvinism across 33 countries. The findings indicate that a positive relationship exists between national identification and chauvinism across most of the countries, although the level differs from country to country. Using a multilevel regression analysis, we tested to see whether globalization, conflict, and social division correlate with this variation. The results indicate that social and political contexts are related to chauvinism and the ways national identifi- cation and chauvinism are linked. Although a closer relation exists between national identification and chauvinism in more globalized countries, globalization failed to explain the variation in chauvinism itself. These findings support the notion that globalization highlights the importance of national identity (Calhoun, 2007; Castells, 2011). While those sections of globalized societies that are attached to their country also tend to resist international cooperation and endorse hostile views, the complexity of the phenomenon—as evinced by the divergent findings of previous studies (e.g. Jung, 2008; Norris & Inglehart, 2009)—calls for further research of this interpretation. The fact that the current study is cross-sectional must also be taken into account, the findings adducing the relation but not the causal relations between the variables. In contrast to experimental studies, the present design is similarly limited in its ability to offer a robust control for alternative explanations.¶ Another external factor found to be relevant—to a certain degree—was conflict. Countries that suffered large numbers of deaths in conflicts and mobilized resources and personnel exhibited higher levels of chauvinism. When other indices for conflict were used, however, these results were not replicated. A possible explanation for this finding lies in the inherent limitation in the way in which conflicts are measured across various countries. Measuring international conflicts is a challenging task (Anderton & Carter, 2011). While the ways of measuring conflict were chosen because they reflect different dimensions of conflict in order to be representative of a wide range of countries, the problem of comparability cannot be ignored. An alternative explanation may derive from the fact that only deaths from conflict and resources/personnel mobilization are sufficiently significant to contribute to chauvinism. The limitations of our measurements of conflict and research design mean that this idea must remain speculative, however. In addition, it is important to emphasize that the sample of countries is also limited as many countries are not involved in conflict and there is also limited variation in the types of conflicts.¶ **Contrary to what the divisionary theory of national mobilization would lead us to expect,** neither economic inequality nor ethnic diversity were related to chauvinism or affected the relation between **national identification** and **chauvinism**. This finding might also be explained by the limitation of the current research design. The number of countries included in the ISSP 2003 National Identity Module being relatively small and the sample only covering countries with available survey data, the results relate solely to this specific sample of countries. Across another set of countries, social division might play a far more significant role. Another explanation might be the meaning given to national identification and chauvinism across the countries. While evidence exists for the comparability of the scales across most of the countries, the divergent meaning probably attributed to them in Germany, the United States, and Israel might form an additional limitation.

## FTC

### top

#### 1-Long time frame --- loses and cases and appeals take years

#### 2-FTC will get NARROW wins on labor rights now --- and loses don’t hurt cred --- ppl appreciate them making the case

Pierce 21 --- Richard J. Pierce, Jr., GW Regulatory Studies Center, “Unsolicited Advice for FTC Chair Khan”, July 15th 2021, https://regulatorystudies.columbian.gwu.edu/unsolicited-advice-ftc-chair-khan

There are five changes in law in President Biden’s list that the FTC has been attempting to make for many years, with limited success in court. I described those proposed changes in my July 12 essay.[3] The FTC should continue to pursue those socially-beneficial changes, but with the understanding that they are long-term goals. The FTC is unlikely to succeed in persuading the courts to acquiesce in most of those changes during President Biden’s first term in office.

The FTC’s number one short-term goal should be to eliminate most of the non-compete clauses in employment contracts. President Biden emphasized the severity of the problems caused by non-compete clauses in the speech that he made when he announced his antitrust agenda. As he noted, they now exist in about 30% of employment contracts, including contracts for employment as a hamburger flipper in a fast food restaurant. They inflict significant harm on employees by prohibiting them from taking jobs that would improve their pay or working conditions.

Non-compete clauses significantly impair the performance of the labor market by limiting the role of competition. They are responsible for a significant part of the large gap between our constantly increasing labor productivity and our stagnant wage levels. That gap has grown over the past thirty years. They also have contributed to the vast gaps in our income and wealth that have increased dramatically in recent years.

The Supreme Court’s June 21 opinion in NCAA v. Alston provides powerful evidence that the Court would be receptive to an FTC campaign to outlaw most non-compete clauses. The Justices made it clear that they unanimously support efforts to improve the performance of labor markets. They are prepared to hold unlawful any anticompetitive practice that employers adopt as a means of artificially depressing wages. Noncompete clauses fit that characterization perfectly.

#### 3-FTC doesn’t solve scams

Chesney & Citron 19 --- Bobby Chesney and Danielle Citron, California Law Review, “Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security”, https://www.californialawreview.org/print/deep-fakes-a-looming-challenge-for-privacy-democracy-and-national-security/#clr-toc-heading-3

A review of current areas of FTC activity suggests limited possibilities. Most deep fakes will not take the form of advertising, but some will. That subset will implicate the FTC’s role in protecting consumers from fraudulent advertising relating to “food, drugs, devices, services, or cosmetics.”[247] Some deep fakes will be in the nature of satire or parody, without intent or even effect of misleading consumers into believing a particular person (a celebrity or some other public figure) is endorsing the product or service in question. That line will be crossed in some instances, however. If such a case involves a public figure who is aware of the fraud and both inclined to and capable of suing on their own behalf for misappropriation of likeness, there is no need for the FTC or a state agency to become involved. Those conditions will not always be met, though, especially when the deep-fake element involves a fraudulent depiction of something other than a specific person’s words or deeds; there would be no obvious private plaintiff. The FTC and state attorneys general (state AGs) can play an important role in that setting.

#### 4-Market solutions prevent the impact

Chesney & Citron 19 --- Bobby Chesney and Danielle Citron, California Law Review, “Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security”, https://www.californialawreview.org/print/deep-fakes-a-looming-challenge-for-privacy-democracy-and-national-security/#clr-toc-heading-3

We anticipate two types of market-based reactions to the deep-fake threat. First, we expect the private sector to develop and sell services intended to protect customers from at least some forms of deep fake-based harms. Such innovations might build on the array of services that have emerged in recent years in response to customer anxieties about identity theft and the like. Second, we expect at least some social media companies to take steps on their own initiative to police against deep-fake harms on their platforms. They will do this not just because they perceive market advantage in doing so, of course, but also for reasons including policy preferences and, perhaps, concern over what legislative interventions, including amendments to Section 230 of the Communications Decency Act, might occur down the road if they take no action. Both prospects offer benefits, but there are both limits and risks as well.

#### 5-The impact is literally ridiculous

No one is going to pretend to be biden on twitter and start a nuclear war “it is no longer unthinkable, if it ever truly was, that someone take over the account of a world leader and attempt to start a nuclear war”

#### 6-No emerging tech.

Sechser 19 – Todd S. Sechser, Public Policy Professor at the University of Virginia. Neil Narang, Political Science Professor at the University of California, Santa Barbara. Caitlin Talmadge, Security Studies Professor at Georgetown University. [Emerging technologies and strategic stability in peacetime, crisis, and war, Journal of Strategic Studies, 42(6), Taylor and Francis]

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

### Turn

**Tech innovation high --- expanding the scope of antitrust laws stifles it --- turns emerging tech**

**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**.

#### Moving away from the CWS crushes innovation --- lets China set global tech norms

**Springboard 21** --- Springboard provides data, insights, and perspectives on the benefits that competition among leading tech services delivers for consumers, businesses, and communities -- advancing ideas that keep tech empowering people, “Setting The Record Straight: The Consumer Welfare Standard Powers U.S. Tech Leadership” Jan 28th 2021, https://springboardccia.com/2021/01/28/setting-the-record-straight-the-consumer-welfare-standard-powers-u-s-tech-leadership/

Yesterday’s Public Knowledge event calling to undercut the consumer welfare standard and to shift standards governing mergers and acquisitions (M&A) does not acknowledge the **damage** such an approach would have on U**.S. leadership in global tech**. In fact, the U.S. tech sector **sets an example for the rest of the world in competition and innovation** thanks to the **long-standing, pro-consumer antitrust and competition laws.** For the U.S. to continue as a global tech leader, and for consumers and small businesses to continue as the major beneficiaries of tech innovation, **policymakers should keep in mind:**

— The U.S. is home to **the most innovative companies,** and provides the **best regulatory and cultural environment for t**he **next gen**eration of **innovators**.

— **The consumer welfare standard should continue to be upheld as the beacon of antitrust laws** in the U.S. because it is objective, pro-innovation, and pro-consumer.

— Shifting the burden of proof in antitrust and M&A cases **distorts the innovation economy.**

The U.S. is home to **the most innovative companies**, and provides the best regulatory and cultural environment for the next generation of innovators.

BCG’s Most Innovative Companies 2020 rankings shows that American companies comprise 14 of the top 20 companies and half of the top 50. “Overall, U.S. companies represent 25 of the top 50 companies (50%). Only 14 of the top 50 companies (28%) are European-based, and they enter the ranks at 21. None of these [European] companies fall within what generally is considered the tech sector, but rather represent industries such as automobile manufacturing, retail, pharmaceuticals, and consumer goods.”

The U.S. is home to nearly half of the world’s “unicorn” firms, proving that the next generation of innovators value the tech climate in the U.S. Jan Rybnicek, Senior Fellow at the Global Antitrust Institute: “This data shows that entrepreneurs seek to innovate and grow their businesses in the United States more so than in any other country further, **further supporting the notion that the United States has fostered a superior climate for innovation** than has Europe—one in which innovators and entrepreneurs can attain the funding they need to grow and have ample opportunity [to] vigorously compete against old and new rivals.”

**American venture capital investing has grown by nearly 400%**, with deals rising by 140% in the last 10 years, long leading Europe. Jan Rybnicek, Senior Fellow at the Global Antitrust Institute: “The disparity between the United States and European venture capital markets is one reason why the U.S. has consistently been home to the most innovative companies and technological development. But it also is evidence that investors view the United States as a better place to invest, in part because of its more favorable innovation climate.”

The U.S. leads the rest of the world in research & development spending, a key indicator of dynamic competition and innovation. “Among individual countries, the United States was the largest R&D performer in 2017, followed by China, whose R&D spending now exceeds that of the EU. Together, the United States (25%) and China (23%) accounted for nearly half of the estimated global R&D total in 2017.”

**The consumer welfare standard should continue to be upheld as the beacon of antitrust laws** in the U.S. because it is objective, pro-innovation, and pro-consumer.

The consumer welfare standard gives antitrust enforcers a **clear mission, immune from political weaponization**. Joshua D. Wright and Aurelien Portuese, antitrust experts: “The adoption of the consumer welfare standard gave antitrust enforcers a coherent mission: protect the benefits of the competitive process by preventing activities likely to raise market prices, lower market output, or otherwise harm competition. When antitrust focuses upon socio-political goals**, it detracts from this mission**, likely **slowing economic growth and depriving consumers of goods and services.”**

Moving away from an innovation-based consumer welfare standard **puts U.S. tech leadership at risk,** enabling “**regulatory imperialism” and bad-actor nations.** Robert D. Atkinson, President of the Information Technology and Innovation Foundation: “In this scenario, the United States either by commission or omission allows the EU model of digital governance to prevail in most parts of the world, **other than China and digital bad-actor nations**. By commission, the United States would support the right of the EU to enact **stifling regulations** and encourage companies around the world to adopt them, **so they become the de facto rules.** By omission, the United States does little to actively work with other nations to educate and pressure them to adopt the U.S. innovation-based model of digital regulation. Either way, **the United States is isolated, and its firms face a global digital economy—one that isn’t based on open, rules-based competition and innovation,** but rather on who can best manage multiple conflicting compliance regimes.”

The consumer welfare standard enables antitrust regulators to **effectively promote innovation** in the technology industry. Joe Kennedy, Senior Fellow at the Information Technology and Innovation Foundation: “[Consumer welfare standard] allows regulators to focus on the long-term trajectory of value and price, and take innovation effects directly into consideration. As UC Berkeley professor Carl Shapiro points out, the consumer welfare standard defines welfare broadly and encompasses nonprice aspects such as improved product variety and more rapid innovation. This is also clear from the merger guidelines themselves, which explain that potential effects are put in terms of price changes ‘[f]or simplicity of exposition,’ and that non price terms and conditions that adversely affect customers also matter, including ‘reduced product quality, reduced product variety, reduced service, or diminished innovation.'”

The claims that consumers are better off with higher prices and more competitors **are not grounded in evidence.** Herbert J. Hovenkamp, Professor of the University of Pennsylvania Law School: “To date, the strongest and most central claim of the neo-Brandeis movement remains **untested**; that is its assumption that individuals in our society would really be better off in a world characterized by **higher prices but smaller firms**. Everyone in society is a consumer and consumers vote mainly with their purchasing choices. The neo-Brandeisians still face the formidable task of providing evidence that most citizens believe they would be better off in a world of higher cost smaller firms selling at higher prices, their market behavior notwithstanding.”

Shifting the burden of proof in antitrust and M&A cases distorts the innovation economy.

Digital platforms only account for 0.06 percent of M&A activities worldwide since 1998. “According to the Institute for Mergers, Acquisitions, and Alliances, there have been 894,669 worldwide acquisitions since 1998, an average of 40,667 annually, which means the four digital platforms accounted for .06 percent of total acquisitions.”

Imposing a burden of proof on antitrust defendants would risk **increasing false-positives, impeding innovation**. Geoffrey A. Manne, President of the International Center for Law & Economics: “The combination of the anti-market bias in favor of monopoly explanations for innovative conduct that courts, enforcers, and economists do not understand, the unwarranted fear of new technologies leading to ‘technopanics,’ and the increased, economy-wide stakes of antitrust intervention against innovative technologies and business practices, increases both the likelihood that antitrust errors surrounding digital markets will be Type I, false-positive errors, as well as increasing their cost.”

Misguided proposals to change antitrust presumptions **undermines the pro-consumer focus of antitrust laws and burdens the innovative players**. Ben Sperry, Associate Director of the International Center for Law & Economics: “The HJC report’s recommendations on changing antitrust presumptions should be rejected. The harms will be felt not only by antitrust defendants, who will be much more likely to lose regardless of whether they have violated the law, but by consumers whose welfare is no longer the focus. The result is inconsistent with the American tradition that presumes innocence and the ability of people to dispose of their property as they see fit.”

# 2NC

# 2NC---Harvard R3

## CP---Section 5

### 2NC---O/V

### 2NC---AT: No Authority for CWS

#### Wrong---even if standards are not outlawed under judicial interpretation.

Rozga ‘21

et al; Kaj Rozga is a former Federal Trade Commission attorney with a breadth of antitrust experience representing clients in litigation, cartel, and transactional matters. While with the FTC's Bureau of Competition, Kaj was a member of trial teams that brought a pair of successful hospital merger challenges and was involved in the review of various healthcare, consumer products, and technology deals. He is now an attorney in the private sector. “Major Leadership and Policy Changes at the FTC—What They Mean for Antitrust and Consumer Protection Enforcement in Technology Markets” – Davis, Wright, Tremaine, LLP - 07.14.21 - #E&F – modified for language that may offend - https://www.dwt.com/insights/2021/07/biden-ftc-antitrust-initiatives

The Commission also voted to rescind a 2015 policy statement setting out the contours for the agency's reliance on Section 5 of the FTC Act, which bars "unfair methods of competition." Section 5 has been at the center of much controversy. Its critics say the use of Section 5 "unfair competition" claims should be constrained in order to avoid overbroad and arbitrary enforcement by the FTC.

Its proponents in academic and policy circles, on the other hand, argue that Congress intended an expansive use of the provision that would reach conduct that has proven difficult for enforcers when relying on traditional antitrust laws—the Sherman Act and the Clayton Act—such as invitations to collude, so-called "pay-for-delay" pharmaceutical deals, exclusive dealing, and employee non-competes.6

The 2015 policy statement signaled that the FTC had conceded to a more restrictive view of Section 5. It declared the "consumer welfare standard" the predominant rubric for adjudging whether competition has been harmed in Section 5 cases; promoted the use of a "rule of reason" balancing test for proving competitive effects; and backed off relying on standalone Section 5 claims where enforcement of traditional antitrust laws would suffice.7

These positions have been targeted by reformers, who ~~viewed~~ (considered) them as barriers to broader enforcement of competition laws. The July 1, 2021, decision by the FTC to rescind the 2015 policy statement could signal an expansion of agency powers to target novel claims under Section 5:

For antitrust reformers, going beyond "consumer welfare" would mean expanding protections for rivals and enabling theories of harm based on innovation, choice, access, and other aims not directly tied to consumer pricing and supplier output.

Backing off the "rule of reason," where an antitrust violation may only be found after a careful balancing of pro- and anti-competitive effects demonstrates a net harmful effect on competition, would likely mean more reliance on rebuttable presumptions (based on market shares, etc.) that try to establish what is more akin to a bright-line rule against certain conduct.

Loosening restrictions on bringing standalone claims for "unfair methods of competition" would provide an opening for the FTC to police conduct that is not unlawful under prevailing judicial interpretations of traditional antitrust laws.

### 2NC---AT: Judicial Rollback

#### Lopez-Galdos goes Neg – green:

* Assumes rulemaking – not guidance.
* Empirically false - full article doesn’t assume CP – it assumes Chair Khan’s “Statement to rescind” – which already happened and didn’t cause backlash.

Marianela Lopez-Galdos 7-28-21. 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. “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/

MSU = green

Emory = blue

The FTC’s Enforcement Authority

Let’s get started by understanding why the FTC’s antitrust policy rerouting has raised a lot of questions. The FTC is one of the two federal agencies that has authority over competition, and consumer protection matters. Throughout its enforcement, advocacy and regulatory activities, the FTC has endorsed competition policy that has inured to the benefit of consumers in the U.S. economy.

As most DisCo readers know, the FTC under a Neo-Brandeisian leader has in a short period of time made drastic changes to the bipartisan consensus that had traditionally governed the FTC’s enforcement decision-making framework. In this respect, the most prominent example is the FTC’s recent decision to rescind the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (Section 5 Policy Guidelines).

In 2015, under the Obama administration, the FTC adopted the Section 5 Policy Guidelines with bipartisan support. These guidelines were the result of a lot of work put forward throughout many years by the antitrust community including academia and FTC staffers. Although the Guidelines were short, and maybe imperfect, they covered the minimum principles to guide the FTC when enforcing Section 5 of the FTC Act relating to ‘unfair methods of competition’ that fell outside the scope of the Sherman and Clayton Acts.

Moreover, Section 5 Policy Guidelines reaffirmed the FTC’s commitment to carrying out its antitrust mandate under the consumer welfare standard as noted by the Chairwoman Edith Ramirez: “The promotion of consumer welfare is a cornerstone of the FTC’s antitrust enforcement, and these principles reaffirm the agency’s legal framework in carrying out that important mission.”

But most importantly, the Section 5 Policy Guidelines acted as the guardrails to avoid situations where the FTC, in an effort to expand its enforcement authority, would lose many antitrust stand-alone Section 5 cases in court, to the detriment of the institution itself. Indeed, the Section 5 Policy Guidelines were the result of lessons learned throughout the history of the FTC and represented a tool to avoid history repeating itself. In this respect, it is important to recall that back in the 70s, under Chairman Pertschuck, and in the following years, the FTC suffered immensely due to disparities between enforcement promises and implementation capabilities. Much of the institutional suffering came from the agency not self-imposing limitations and standards to bring cases under Section 5 of the FTC Act which led to numerous litigation losses, consequential institutional reputational damage, and lack of political support.

------------------ Emory’s card starts here – no text omitted ---------------------

But the current FTC leadership seems to have overlooked the agency’s history. As such, it has already promised to produce different policy outcomes and noted that the Section 5 Policy Guidelines were shortsighted. As a result, the current FTC has decided, with the support of the other two Democratic Commissioners, to rescind the Policy Guidelines.

It is unknown whether the current FTC will try to adopt different guidelines or whether it will start opening more cases under Section 5 of the FTC Act. Furthermore, it is less clear whether the new FTC leadership currently counts with the sufficient and aligned Neo-Brandeisian human talent to bring solid cases that are not based on the consumer welfare standard or to litigate before judges that support the Neo-Brandeisian vision of antitrust.

What seems clear is that the new agency’s leader might find it hard to bring all Commissioners to an agreement with respect to what the agency can do with Section 5 of the FTC Act, and this situation, in and of itself, puts the agency in peril.

The FTC’s Rulemaking Authority

Another important policy change that may be detrimental to the FTC is its expressed willingness to expand the agency’s rulemaking authority under, e.g., Section 18 of the FTC Act. It is well known that in addition to its authority to investigate law violations by individuals and businesses, the FTC also has federal rulemaking authority to issue industry-wide regulations.

However, the agency’s rulemaking authority has been self-limited since the 80s in an effort to ensure the institution doesn’t overuse its capacity to adopt industry-wide regulations and raise concerns with those policy makers that are against the legislature deferring its core mandate to an independent agency that doesn’t represent the people.

Traditionally the legislature has the constitutional mandate to create laws affecting different sectors of the economy. Whereas it is legally accepted to design independent agencies with constrained mandates to adopt regulations, such powers are not necessarily understood to construe independent agencies as substitutes for the legislature’s powers. It is a basic tenet of administrative law, that agencies are constrained by the enabling statute that gives them authority to promulgate regulations in the first place.

Against this background, it seems risky for the new leadership to engage in broad rulemaking endeavors that might raise concerns from an institution legitimacy perspective. In the long term, it is predictable that many policymakers might not be supportive of an agency that implements its rulemaking authority in its broadest sense. As a result, some degree of political backlash against the agency might not help the agency’s lifecycle, especially if the agency is not granted with specific legislative guidance in the form of new legislation.

The Future of the FTC

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.

#### Their evidence says the only reason rule-making wouldn’t work is because of court challenges---MSU = GREEN.

Nicolás Rivero 21. NU Graduate. "Biden’s antitrust crusaders can’t crusade without Congress". Quartz. 3-11-2021. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/amp/

US president Joe Biden is poised to promote two of the country’s most prominent anti-monopoly crusaders to top jobs in his administration. The moves signal that Biden is serious about cracking down on dominant companies that include Facebook, Google, Amazon, and Apple. But for the president’s trustbusting champions to make a real impact, they’ll need support from Congress.

Biden appointed Columbia law professor Tim Wu to the National Economic Council (NEC) as his top advisor on technology and competition on March 5. Politico reports that Biden will soon follow up by nominating Lina Khan, also a Columbia law professor, to the Federal Trade Commission (FTC). (Before she can take her seat as one of the antitrust agency’s five commissioners, Khan must be confirmed by the Senate.)

Khan and Wu are two of the leading voices in a new movement of legal thought that argues the US should fundamentally overhaul the way it approaches antitrust. The crux of their argument is that courts should broaden the values they consider when deciding whether to block a merger or break up a dominant company. Rather than focus narrowly on the impact a company has on consumer prices, they argue that judges should also think about a company’s impact on small businesses, labor rights, and the health of democracy.

Khan and Wu have already secured a win for their cause just by being appointed—essentially a White House stamp of approval on their viewpoints. But despite much handwringing from industry groups, neither appointee will be able to single-handedly remake American antitrust in their image.

How the FTC can tackle antitrust

To be sure, Wu can advocate loudly for his preferred policies from his perch at the NEC, which advises the president on economic policy. And if Khan makes it to the FTC, which is the top US antitrust enforcement agency, she’ll have direct influence over which investigations the agency prioritizes, which lawsuits it brings, and whether its prosecutors will ask judges to impose fines, break up dominant firms, or require them to change their business practices.

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down.

How Congress can tackle antitrust

The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the blueprint laid out in last year’s antitrust report from the House of Representatives (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google.

Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage.

Ultimately, Congress should be the body that sets US antitrust policy. It has the clearest authority to ban the bullying business tactics for which Big Tech firms have been criticized. Legislative fixes are likely to be quicker and less vulnerable to court challenges—not to mention more democratic—than changing FTC rules. And it has traditionally been Congress’s prerogative to keep the country’s antitrust policy up to date: Legislators updated the monopoly laws every two decades or so between 1890 and 1950 to respond to new threats. They’ve just neglected that tradition for the past 70 years.

#### 2. Guidance---courts have determined that the precise specification of conduct is binding.

Seidenfeld ‘11

Mark Seidenfeld – Patricia A. Dore Professor of Administrative Law, Florida State University College of Law. “Substituting Substantive for Procedural Review of Guidance Documents” - 90 TEX. L. REV. 331 (2011) -#E&F – continues to footnote #97 - https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1004&context=articles

2. Interpretive Rules.—The picture is slightly clearer for purported interpretive rules, although the distinction between interpretive and legislative rules is still far from pellucid.97 Again, the focus is on whether the rule “carries the force and effect of law,”98 but the emphasis for evaluating an interpretive rule is whether the binding obligation is created by the rule rather than reflecting a preexisting obligation imposed by the statute or regulation the rule purports to interpret.99 Operationally, this inquiry looks at the relation between the rule and the text it interprets.100 For example, courts have stated that a rule is interpretive if it spells out a duty “fairly encompassed” within the regulation that the interpretation purports to construe.101 The basis for this test is that a rule that is fairly encompassed does not create an independent legal obligation, but rather merely clarifies one that already exists. Similarly, courts have held that a rule that is inconsistent with, or amends, a legislative rule cannot be interpretive, because such a rule would impose new rights or obligations.102 This standard, however, still leaves difficult line-drawing choices for determining whether the connection between an announced interpretation and the text being interpreted is sufficiently close to characterize the announcement as an interpretive rule. In fact, courts often deviate from the strictures of the doctrine they have created by holding that interpretations that are clearly not encompassed in the language being interpreted were, nonetheless, interpretive rules.103

97. Gen. Motors Corp. v. Ruckelshaus, 742 F.2d 1561, 1565 (D.C. Cir. 1984). Courts will often characterize guidance documents that are not clarifications of language nonetheless as interpretive, and then uphold them even though they are sufficiently definitive that a court almost certainly would reverse them were they characterized as policy statements. See John F. Manning, Nonlegislative Rules, 72 GEO. WASH. L. REV. 893, 926–27 (2004) (evaluating the D.C. Circuit’s method of identifying “procedurally invalid nonlegislative rules” and observing that “the resulting inquiry has an air of arbitrariness to it”).

#### 3. Won’t challenge or win because of ripeness

* Agencies can issue *“Guidance”* (and enforce) – or they can create *“Rulemaking”* – both have legal force, but the latter tends to encounter more judicial review/resistance.

Raso ‘10

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

5. Judicial Challenge

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

#### 4. Empirics---prefer SCOTUS *precedent* AND *empirics dipped from when the Court’s ideology was most aligned with the Chicago School*.

Dagen ‘10

Richard – Formerly, Adjunct Professor Boston University School of Law (Aug 2005 - Dec 2006) specializing in Antitrust; former Kramer Fellow - Harvard Law School. At the time of this writing, the author served as Antitrust, High Tech and Antitrust Special Counsel to the Director, Bureau of Competition, Federal Trade Commission “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT” – BOSTON UNIVERSITY LAW REVIEW - Vol. 90 - #E&F - http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

The FTC enforces Section 5, which makes unlawful “unfair methods of competition.”118 In FTC v. Sperry & Hutchinson Co., the Supreme Court held that Section 5 “empower[s] the Commission to define and proscribe an unfair competitive practice, even though the practice does not infringe either the letter or the spirit of the antitrust laws.”119 Many believe that the interpretation of Section 5 as broader than the Sherman Act is a remnant of a bygone era. But even during the Chicago School era, the Supreme Court reaffirmed its understanding that Section 2 and Section 5 differed. For example, in Copperweld Corp. v. Independence Tube Corp., while attempting to limit the reach of the Sherman Act, the Reagan antitrust team, led by Assistant Attorney General William Baxter, and FTC Chairman James Miller, submitted an amicus brief highlighting that “[t]he courts have held that some forms of less dangerous, but nonetheless anticompetitive, unilateral conduct may be subject to Section 5 of the Federal Trade Commission Act.”120 The Court thereafter explained that single firm conduct was governed not only by Section 2 but also by Section 5.121 In 1986, the Court more specifically and directly referenced the “spirit” of Section 5, stating that Section 5 “encompass[es] not only practices that violate the Sherman Act and other antitrust laws, . . . but also practices that the Commission determines are against public policy for other reasons.”122

#### 5. Rollback assumes Core Antitrust *at present* – it’s less likely precisely because the Aff *expands beyond* current core understandings.

Dagen ‘10

Richard – Formerly, Adjunct Professor Boston University School of Law (Aug 2005 - Dec 2006) specializing in Antitrust; former Kramer Fellow - Harvard Law School. At the time of this writing, the author served as Antitrust, High Tech and Antitrust Special Counsel to the Director, Bureau of Competition, Federal Trade Commission “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT” – BOSTON UNIVERSITY LAW REVIEW - Vol. 90 - #E&F - http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

In Part III, I provide a more comprehensive analysis of Section 5. I begin with a general discussion of the breadth of Section 5 and then address the concern that using Section 5 to fill in gaps in the antitrust laws will cause mayhem. Although some maintain that the FTC should not use Section 5 because three different appellate courts chastised the FTC in the 1980s for trying to expand the antitrust laws, those defeats involved core competition practices that the courts protect the most. As the conduct moves away from either the core or the essential, authority under both the Sherman Act and the FTC Act is broader.

### 2NC---AT: No Teeth

#### Deterrence effect solves

Melamed ‘16

A. Douglas Melamed - Professor of the Practice of Law, Stanford Law School – “PREPARED STATEMENT For the SENATE COMMITTEE ON THE JUDICIARY SUBCOMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS on SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT” - April 5, 2016 #E&F - https://www.judiciary.senate.gov/imo/media/doc/04-05-16%20Melamed%20Testimony.pdf

(2) Some have emphasized that only the FTC can enforce Section 5 and that the only remedy for Section 5 is a “cease and desist” order issued by the FTC. Because there are no treble damages for Section 5 violations, it is suggested, there should be no fear that businesses will be unfairly punished for engaging in conduct that they did not understand to be unlawful or that businesses will be deterred from engaging in procompetitive conduct for fear of violating an ambiguous Section 5. Of course, if that were true, the prospect of standalone Section 5 enforcement would also not deter anticompetitive conduct.

There are two problems with this argument. First, the premise that remedies for violating Section 5 are inconsequential is incorrect. The FTC has for decades taken the position that its authority to issue “cease and desist” orders permits it to enter broad injunction orders that require parties to take a wide range of actions to rectify alleged harm and to ensure that they will not engage in the future in what the FTC regards as conduct similar to that alleged to have violated Section 5. Businesses sometimes find the prospect of such intrusive or sweeping restrictions on how they conduct their business to be far more worrisome than the prospect of treble damage liability.

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

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

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

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

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

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

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

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

#### 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.

## CP---Con Con

### 2NC---Condo

## Inequality

### 2NC---AT: Solvency

#### Lack of antitrust enforcement is not tied to inequality

Hsu 18 Shi-Ling Hsu, Florida State University College of Law. “Antitrust and Inequality: The Problem of Super-Firms.” *The Antitrust Bulletin* 2018, Vol. 63(1) 104-112 DOI: 10.1177/0003603X18756145 <https://myweb.fsu.edu/shsu/publications/63AntitustBull104.pdf> {DK}

It is thus unsurprising that inequality and antitrust law should be joined from time to time. Unrest in these areas has brewed for decades, received heightened attention after the global financial crisis of 2008, and exploded into politics recently as populist anger. Both contribute to a growing unease among the nonwealthy—say, those in the bottom 95% of income or wealth— that they are alienated from a richer and more powerful class, and that distant barons somehow control their lives and their fate. Prominent scholars, including Nobel laureates Joseph Stiglitz and Paul Krugman, and the late Sir Anthony Atkinson, longtime advocates of poverty relief, seem to be tapping into a century-old fear of monopoly,5 albeit sometimes casually. Why not? Monopoly or oligopoly rents transfer wealth from consumers to producers, which would seem to naturally lead to an increase in inequality.6 But the linkage between inequality and the rise of this new trend towards industrial concentration is not always so clear. For one thing, as Daniel Crane argues, heterogeneity among consumers and producers render it extremely difficult to determine whether on net, industrial concentration redistributes wealth from poor to rich.7 On the consumer side, the rise of these super-firms that seek to dominate markets for internet search, retail, social media, telecommunications, electronics, and seemingly everything important have, despite their ominously large market shares, incontrovertibly produced enormous consumers surplus. Even as Amazon has driven independent booksellers out of business, it is hard to ignore that the fact that a very, very wide swath of consumers have benefitted from low prices. Without a clean counterfactual of a world without Amazon, Google, Apple, Microsoft, Facebook, and other super-firms, it is difficult to separate out the contributions and the deadweight losses created by their dominance. For another thing, many of these super-firms arise in industries that still have low barriers to entry, and remain vulnerable to inchoate competition. After all, fears in the 1990s of a Microsoft monopoly have proven to be misplaced. In the two decades since the settlement of the U.S. Department of Justice’s antitrust action against Microsoft,8 other tech giants have emerged to challenge Microsoft, and some have already come and gone. In a 2014 speech, former Google CEO Eric Schmidt said, “someone, somewhere in a garage, is gunning for us. I know because not long ago we were in that garage.”9 Competition in retailing has become ferocious, as Amazon and Walmart started from different places and now find themselves competing in the grocery market.10 The logical goal of all of these firms is to become the singular provider of a wide range of goods and life services to billions of consumers worldwide. Tech giants, retailing giants, and even pharmaceutical giants such as CVS and Walgreens seem to be capturing ever-larger shares of a wider variety of goods and services, competing vigorously with each other in overlapping markets,11 and even branching out into the provision of simple medical services such as vaccinations.12 The kind of market power sought by all of these actors would be unprecedented, but competition and unremitting threats of new entrants still seem to render the threat of monopolization remote.13 Or, as Herbert Hovenkamp put it, claims that “low prices today [will be recouped by] monopoly profits later ... need to be more than an abstract proposition.”14 But while it is premature to lay blame on antitrust law for inequality, it is also imprudent to dismiss it. Antitrust law may, as currently practiced, contribute to inequality in a subtle but important way: by contributing to a shift in the capital-labor ratio of some of the most dominant firms. Antitrust law’s singular focus on efficiency15 has, unsurprisingly, helped bring about enormous gains in efficiency. What is less obvious is that it has done so in a way that has created an economy that is more capitalintensive, and less labor-intensive. This raises a thorny normative question about the desirability of a far more efficient economy with far fewer jobs. But if we start with the premise that inequality is too high and needs to be reduced, antitrust law should be part of the conversation.

### 2NC---AT: Nationalism !

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

#### No war – empirics

-Specifically says nationalism/democracy/game theory/liberal institutionalist norms won’t lead to war if they occur

-Says no diversionary theory because public w/n demand war

Jervis, 11 (Professor PolSci Columbia, ’11 (Robert, December, “Force in Our Times” Survival, Vol 25 No 4, p 403-425)

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

### 2NC---AT: LIO !

**No liberal order or SOI impact---states won’t risk war, err towards isolation, AND mediate ties economically**

**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]

Complacency, Appeasement, Self-destruction, and the New Cold War

It could be argued that the policies proposed here to deal with the international problems, whether real or imagined, presented by China, Russia, and Iran constitute exercises not only in complacency, but also in appeasement. That argument would be correct. As discussed in the Prologue to this book, appeasement can **work** to **avoid military conflict** as can be seen in the case of the **Cuban missile crisis** of 1962. As also discussed there, appeasement has been **given a bad name** by the experience with Hitler in 1938.

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.

The current **wariness** about, and **hostility** toward, Russia and China is sometimes said to constitute “a new Cold War.”133 There are, of course, considerable differences. In particular, during the Cold War, the Soviet Union – indeed the whole international Communist movement – was under the sway of a Marxist theory that explicitly and determinedly advocated the destruction of capitalism and probably of democracy, and by violence to the degree required. Neither **Russia nor China** today sports such **cosmic goals** or is enamored of such **destructive** methods. However, as discussed in Chapters 1 and 2, the United States was **strongly** inclined during the Cold War massively to **inflate the threat** that it imagined the Communist adversary to present. The current “new Cold War” is thus in an important respect quite a bit like the old one: it is an **expensive**, substantially **militarized**, and often **hysterical** campaign to deal with threats that do not exist or are likely to selfdestruct.134

It may also be useful to evaluate terms that are often bandied about in considerations within foreign policy circles about the rise of China, the assertiveness of Russia, and the antics of Iran. High among these is “hegemony.” Sorting through various definitions, Simon Reich and Richard Ned Lebow array several that seem to capture the essence of the concept: domination, controlling leadership, or the ability to shape international rules according to the hegemon’s own interests. Hegemony, then, is an extreme word suggesting supremacy, mastery, preponderant influence, and full control. Hegemons force others to bend to their will whether they like it or not. Reich and Lebow also include a mellower designation applied by John Ikenberry and Charles Kupchan in which a hegemon is defined as an entity that has the ability to establish a set of norms that others willingly embrace.135 But this really seems to constitute an extreme watering-down of the word and suggests opinion leadership or entrepreneurship and success at persuasion, not hegemony.

Moreover, insofar as they carry meaning, the militarized application of American primacy and hegemony to order the world has often been a fiasco.136 Indeed, it is impressive that the hegemon, endowed by definition by what Reich and Lebow aptly call a grossly disproportionate military capacity, has had such a miserable record of military achievement since 1945 – an issue discussed frequently in this book.137 Reich and Lebow argue that it is incumbent on IR scholars to cut themselves loose from the concept of hegemony.138 It seems even more important for the foreign policy establishment to do so.

There is also **absurdity** in getting up tight over something as **vacuous as the venerable “sphere of influence” concept** (or conceit). The notion that world affairs are a process in which countries **scamper** around the world seeking to establish spheres of influence is at best decidedly unhelpful and at worst **utterly misguided**. But the concept continues to be embraced in some quarters as if it had some palpable meaning. For example, in early 2017, the august National Intelligence Council opined that “Geopolitical competition is on the rise as China and Russia seek to exert more sway over their neighboring regions and promote an order in which US influence does not dominate.”139 Setting aside the **issue of the degree** to which American “influence” could be said to “**dominate**” anywhere (we still wait, for example, for **dominated Mexico** supinely to pay for a wall to seal off its self-infatuated neighbor’s southern border), it **doesn’t bloody well matter** whether China or Russia has, or seems to have, a “sphere of influence” someplace or other.

More importantly, the whole notion is vapid and essentially meaningless. Except perhaps in Gilbert and Sullivan’s Iolanthe. When members of the House of Lords fail to pay sufficient respect to a group of women they take to be members of a ladies’ seminary who are actually fairies, their queen, outraged at the Lords’ collected effrontery, steps forward, proclaims that she happens to be an “influential fairy,” and then, with a few passes of her wand, brushes past the Lords’ pleas (“no!” “mercy!” “spare us!” and “horror!”), and summarily issues several edicts: a young man of her acquaintance shall be inducted into their House, every bill that gratifies his pleasure shall be passed, members shall be required to sit through the grouse and salmon season, and high office shall be obtainable by competitive examination. Now, that’s influence. In contrast, on December 21, 2017, when the United States sought to alter the status of Jerusalem, the United Nations General Assembly voted to repudiate the US stand in a nearly unanimous vote that included many US allies. Now, that’s not influence.

In fact, to push this point perhaps **to an extreme**, if we are entering an era in which **economic motivations** became **paramount** and in which military force is **not deemed a sensible method** for pursuing wealth, the **idea of “influence”** would become obsolete because, in principle, pure economic actors do not care much about influence. They care about getting rich. (As Japan and Germany have found, however, influence, status, and prestige tend to accompany the accumulation of wealth, but this is just an ancillary effect.) Suppose the president of a company could choose between two stories to tell the stockholders. One message would be, “We enjoy great influence in the industry. When we talk everybody listens. Our profits are nil.” The other would be, “No one in the industry pays the slightest attention to us or ever asks our advice. We are, in fact, the butt of jokes in the trade. We are making money hand over fist.” There is no doubt about which story would most thoroughly warm the stockholders’ hearts.

## FTC Cred

### 2NC---AT: Nuke Terror !

#### Complexity and cost greatly increase the odds of terrorists being disrupted

Greg Allen 17, Adjunct Fellow at the Center for a New American Security, 3-4-2017, "Thank Goodness Nukes Are So Expensive and Complicated," WIRED, https://www.wired.com/2017/03/thank-goodness-nukes-expensive-complicated/

What about nuclear weapons? Here costs shoot upward. Saddam Hussein spent billions to develop nukes and failed. North Korea succeeded, but it took decades; the country also spent billions even with low wages and conscripted labor. Even if you could scrape together a billion dollars to buy a bomb, North Korea probably wouldn't sell you one. Every nuclear detonation releases a traceable radioactive signature, and Kim Jong-un worries he'll take the blame if you use his nukes. Unless you can steal a bomb or steal some weapons-grade nuclear fuel to construct a crude nuclear device, you're probably not going to acquire nuclear weapons. The technology for making nuclear fuel is too expensive and complicated, and if you try, the amount of labor, expertise, and financing you would need make it likely your efforts would be uncovered and stopped. Thank goodness. The massive expense and technological complexity associated with developing nuclear weapons is one of the great strokes of luck in human history. Imagine an alternate universe where nukes were like IEDs: cheap, simple, and constructible using widely available commercial parts and materials. Would humanity have survived the discovery of nuclear technology? Certainly not. We barely survived as it is. In this sense, the mass destruction cost curve is protective. The diplomats, scientists, spies, and soldiers of the global non-proliferation regime do incredible work in preventing terrorists and greater numbers of countries from acquiring nuclear weapons. However, their extremely difficult mission would be utterly impossible if uranium was just a little easier and cheaper to weaponize. Perhaps it would be better if nuclear weapons never existed, but, given that they do, we are lucky that they reside at the very top of the mass destruction cost curve.

#### Even if the acquire, they wouldn’t use them---it’s better as a bargaining chip.

---terrorists obviously don’t want to get nuked in response, wouldn’t be able to sustain finance or internal support, and historical analysis prove they don’t cross those thresholds

McIntosh & Storey 19 (Christopher McIntosh, Assistant Professor of Political Studies at Bard College; Ian Storey, associate fellow at the Hannah Arendt Center for Politics and Humanities, Bard College, “Would terrorists set off a nuclear weapon if they had one? We shouldn’t assume so,” 11/20/19, Bulletin of the Atomic Scientists, <https://thebulletin.org/2019/11/would-terrorists-set-off-a-nuclear-weapon-if-they-had-one-we-shouldnt-assume-so/>, GBN-TM)

Terrorists might lose more than they gain by detonating a nuclear bomb. While terrorist organizations vary widely in their internal organization and structure, almost all are highly sensitive to benefits and costs, both external and internal. By examining these, it will become clear that terrorists might have more to lose than gain by proceeding directly to an attack. Doing so might alienate their supporters, cause dissent among the ranks, and give away a bargaining chip without getting anything in return. Externally, terrorist groups rely on the support of the society in which they are embedded. As a result, they are deeply intertwined with the local population. Hezbollah is a paradigmatic example: In addition to possessing a quasi-independent political arm, it operates an extensive network of schools, hospitals, and other social services. These extended administrative networks provide a source of recruits, public support, and crucial cover for their financiers. They also engender a risk—what they have put so much effort into building can ultimately be undone by poor strategic decision-making. Beyond the inevitable military response, committing a nuclear attack would represent an existential threat to an organization of this form. The unprecedented death toll of transgressing the nuclear taboo would have a predictably devastating effect on the support networks on which these organizations depend. Afterwards, maintaining the kind of large-scale external finance necessary to sustain them would become virtually impossible, particularly in the context of predictably heightened international law enforcement. In short, the organization would face radical alienation from its public base, as well as, where it exists, its state sponsorship. From the outside looking in, it’s tempting to presume that the kind of public and even the kind of fighters who support Al Qaeda or the Islamic State simply don’t care about the level of violence those groups perpetrate. Empirically, however, this is simply untrue. Sustained analysis of the history of terrorist campaigns—even among those organizations willing to commit large-scale attacks—evinces a delicate balancing act between highly symbolic violence and concerns with stepping over invisible lines. Equally, detonating a nuclear weapon in an attack would create intense strains on the internal dynamics of the organization itself. The sheer magnitude of the decision to proceed with a nuclear attack takes previously available opportunities off the table—returning to small-scale conventional attacks would appear to be a weakening of the organization’s position post–nuclear attack. The opportunity costs presented by the weapon have a significant potential to splinter organizations already concerned about command and control. As the last 20 years have demonstrated, terrorist organizations factionalize and splinter over goals and tactics under even conventional pressure. Post-attack, that pressure would increase exponentially and potentially reorder the international environment in ways that risk the organization’s continued existence. This reality is only magnified by the fact that most terrorist organizations exist in a political landscape in which they are not the only show in town; both the Taliban and Al Qaeda in Afghanistan, for example, face a constant competition with the Islamic State over recruits, bases of operation, and resources. The result is a paradoxical effect on the calculations of terrorist leaders: Obtaining new capacity (even well shy of nuclear weapons) creates powerful incentives toward organizational centralization to prevent unauthorized activity, but such centralization could sideline or alienate certain factions, making it more difficult to hold the organization together. A nuclear attack, then, is the worst possible option for organizational leadership from the perspective of internal politics. This is because it risks setting in motion a series of events that could unravel the organization as a whole at precisely the moment when it needs unity to survive what will (likely) be an overwhelming reaction by the target state and its allies. Finally, it must be remembered that what victory and defeat mean for the archetypal organization engaged in a terrorist campaign is significantly different than in interstate warfare. In conventional war, surrender is followed by capitulation to the opposition’s demands, even if exact terms must be worked out at the peace table. In conflicts between terrorist organizations and states (as well as other nonstate actors), determining what exactly constitutes “victory” or “capitulation” for either side is terminally ambiguous. Even a complete victory for the terrorist group on its own terms, such as the withdrawal of state forces from a region, will likely still be followed by reprisals—such as airstrikes or financial sanctions against the group. As a result, terrorists are inevitably circumscribed in what “success” could look like. Even with a nuclear attack, they could neither threaten the extinction of their opponent (as under the doctrine of mutually assured destruction, or MAD), nor threaten to further escalate costs, having already jumped straight to the top of the escalation ladder. Having played the entirety of its hand to bloody effect, a post–nuclear attack terrorist organization would face a hardened opposition and the prospect of a massive increase in costs, with little in hand to match. Negotiating with nuclear-armed terrorists. If the processes we describe are accurate, then presumption should lie squarely on the side of skepticism whenever the threat of a nuclear attack is raised. But our analysis also highlights which conditions make an attack most likely and which make it increasingly difficult, revealing an entire palette of pressure points and leverage that states can use to further reduce the risk of an attack. For example, a state might use both carrots and sticks to maximize the amount of pressure on key axes like organizational cohesion and local public support. The multiple audiences of a terrorist organization do not belong to them alone: Those audiences are themselves at the intersection of multiple lines of influence that can be pushed and pulled, if not always directly by the states themselves. The skillful use of threats and dangled political incentives can be highly effective in further deterring a nuclear attack. Intelligence is critical in this arena as well, particularly on the financial side. Financial knowledge allows potential target states to know how to threaten existential costs on an organization that might otherwise believe itself relatively impervious to such a threat. In sum, we need to look at the strategic and organizational dynamics in play within terrorist groups in a clear-eyed way, without resorting to simple short-hand heuristics like the acquisition-use assumption. States have somehow muddled through the initial stages of the nuclear revolution with a set of reasonably intelligible and predictable strategies to match their capacities. There is no good reason to presume that a nonstate actor wouldn’t do the same.

### 2NC---AT: Emerging Tech !

#### No emerging tech.

Sechser 19 – Todd S. Sechser, Public Policy Professor at the University of Virginia. Neil Narang, Political Science Professor at the University of California, Santa Barbara. Caitlin Talmadge, Security Studies Professor at Georgetown University. [Emerging technologies and strategic stability in peacetime, crisis, and war, Journal of Strategic Studies, 42(6), Taylor and Francis]

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

#### No emerging tech impact

Shermer 17 – Michael Shermer. Publisher of Skeptic magazine, a monthly columnist for Scientific American, and a Presidential Fellow at Chapman University. “Why Artificial Intelligence Is Not an Existential Threat” April 2017. Skeptic. Vol. 22, no. 2, pp. 29-35.

Why AI is not an Existential Threat First, most AI doomsday prophecies are grounded in the false analogy between human nature and computer nature, or natural intelligence and artificial intelligence. We are thinking machines, but natural selection also designed into us emotions to shortcut the thinking process because natural intelligences are limited in speed and capacity by the number of neurons that can be crammed into a skull that has to pass through a pelvic opening at birth, whereas artificial intelligence need not be so restricted. We don't need to compute the caloric value of foods, for example, we just feel hungry. We don't need to calculate the waist-to-hip ratio of women or the shoulder-to-waist ratio of men in our quest for genetically healthy potential mates; we just feel attracted to someone and mate with them. We don't need to work out the genetic cost of raising someone else's offspring if our mate is unfaithful; we just feel jealous. We don't need to figure the damage of an unfair or non-reciprocal exchange with someone else; we just feel injustice and desire revenge. Emotions are proxies for getting us to act in ways that lead to an increase in reproductive success, particularly in response to threats faced by our Paleolithic ancestors. Anger leads us to strike out, fight back, and defend ourselves against danger. Fear causes us to pull back, retreat, and escape from risks. Disgust directs us to push out, eject, and expel that which is bad for us. Computing the odds of danger in any given situation takes too long. We need to react instantly. Emotions shortcut the information processing power needed by brains that would otherwise become bogged down with all the computations necessary for survival. Their purpose, in an ultimate causal sense, is to drive behaviors toward goals selected by evolution to enhance survival and reproduction. AIs -- even AGIs and ASIs -- will have no need of such emotions and so there would be no reason to program them in unless, say, terrorists chose to do so for their own evil purposes. But that's a human nature problem, not a computer nature issue. To believe that an ASI would be "evil" in any emotional sense is to assume a computer cognition that includes such psychological traits as acquisitiveness, competitiveness, vengeance, and bellicosity, which seem to be projections coming from the mostly male writers who concoct such dystopias, not features any programmer would bother including, assuming that it could even be done. What would it mean to program an emotion into a computer? When IBM's Deep Blue defeated chess master Garry Kasparov in 1997, did it feel triumphant, vengeful, or bellicose? Of course not. It wasn't even "aware" -- in the human sense of self-conscious knowledge -- that it was playing chess, much less feeling nervous about possibly losing to the reigning world champion (which it did in the first tournament played in 1996). In fact, toward the end of the first game of the second tournament, on the 44th move, Deep Blue made a legal but incomprehensible move of pushing its rook all the way to the last row of the opposition side. It accomplished nothing offensively or defensively, leading Kasparov to puzzle over it out of concern that he was missing something in the computer's strategy. It turned out to be an error in Deep Blue's programming that led to this fail-safe default move. It was a bug that Kasparov mistook as a feature, and as a result some chess experts contend it led him to be less confident in his strategizing and to second-guess his responses in the subsequent games. It even led him to suspect foul play and human intervention behind Deep Blue, and this paranoia ultimately cost him the tournamentt.[ 13] Computers don't get paranoid, the HAL 9000 computer in 2001 notwithstanding. Or consider Watson, the IBM computer built by David Ferrucci and his team of IBM research scientists tasked with designing an AI that could rival human champions at the game of Jeopardy! This was a far more formidable challenge than Deep Blue faced because of the prerequisite to understand language and the often multiple meanings of words, not to mention needing an encyclopedic knowledge of trivia (Watson had access to Wikipedia for this). After beating the all-time greatest Jeopardy! champions Ken Jennings and Brad Rutter in 2011, did Watson feel flushed with pride after its victory? Did Watson even know that it won Jeopardy!? I put the question to none other than Ferrucci himself at a dinner party in New York in conjunction with the 2011 Singularity Summit. His answer surprised me: "Yes, Watson knows it won Jeopardy!" I was skeptical. How could that be, since such self-awareness is not yet possible in computers? "Because I told it that it won," he replied with a wry smile. Sure, and you could even program Watson or Deep Blue to vocalize a Howard Dean-like victory scream when it wins, but that is still a far cry from a computer feeling triumphant. This brings to mind the "hard problem" of consciousness -- if we don't understand how this happens in humans, how could we program it into computers? As Steven Pinker elucidated in his answer to the 2015 Edge Question on what to think about machines that think, "AI dystopias project a parochial alpha-male psychology onto the concept of intelligence. They assume that superhumanly intelligent robots would develop goals like deposing their masters or taking over the world." It is equally possible, Pinker suggests, that "artificial intelligence will naturally develop along female lines: fully capable of solving problems, but with no desire to annihilate innocents or dominate the civilization."[ 14] So the fear that computers will become emotionally evil are unfounded, because without the suite of these evolved emotions it will never occur to AIs to take such actions against us. What about an ASI inadvertently causing our extinction by turning us into paperclips, or tiling the entire Earth's surface with solar panels? Such scenarios imply yet another emotion -- the feeling of valuing or wanting something. As the science writer Michael Chorost adroitly notes, when humans resist an AI from undertaking any form of global tiling, it "will have to be able to imagine counteractions and want to carry them out." Yet, "until an AI has feelings, it's going to be unable to want to do anything at all, let alone act counter to humanity's interests and fight off human resistance." Further, Chorost notes, "the minute an A.I. wants anything, it will live in a universe with rewards and punishments -- including punishments from us for behaving badly. In order to survive in a world dominated by humans, a nascent A.I. will have to develop a humanlike moral sense that certain things are right and others are wrong. By the time it's in a position to imagine tiling the Earth with solar panels, it'll know that it would be morally wrong to do so."[ 15] From here Chorost builds on an argument made by Peter Singer in The Expanding Circle (and Steven Pinker in The Better Angels of Our Nature[ 16] that I also developed in The Moral Arc[ 17] and Robert Wright explored in Nonzero[ 18]), and that is the propensity for natural intelligence to evolve moral emotions that include reciprocity, cooperativeness, and even altruism. Natural intelligences such as ours also includes the capacity to reason, and once you are on Singer's metaphor of the "escalator of reason" it can carry you upward to genuine morality and concerns about harming others. "Reasoning is inherently expansionist. It seeks universal application," Singer notes.[ 19] Chorost draws the implication: "AIs will have to step on the escalator of reason just like humans have, because they will need to bargain for goods in a human-dominated economy and they will face human resistance to bad behavior."[ 20] Finally, for an AI to get around this problem it would need to evolve emotions on its own, but the only way for this to happen in a world dominated by the natural intelligence called humans would be for us to allow it to happen, which we wouldn't because there's time enough to see it coming. Bostrom's "treacherous turn" will come with road signs ahead warning us that there's a sharp bend in the highway with enough time for us to grab the wheel. Incremental progress is what we see in most technologies, including and especially AI, which will continue to serve us in the manner we desire and need. Instead of Great Leap Forward or Giant Fall Backward, think Small Steps Upward. As I proposed in The Moral Arc, instead of Utopia or dystopia, think protopia, a term coined by the futurist Kevin Kelly, who described it in an Edge conversation this way: "I call myself a protopian, not a Utopian. I believe in progress in an incremental way where every year it's better than the year before but not by very much -- just a micro amount."[ 21] Almost all progress in science and technology, including computers and AI, is of a protopian nature. Rarely, if ever, do technologies lead to either Utopian or dystopian societies. Pinker agrees that there is plenty of time to plan for all conceivable contingencies and build safeguards into our AI systems. "They would not need any ponderous 'rules of robotics' or some newfangled moral philosophy to do this, just the same common sense that went into the design of food processors, table saws, space heaters, and automobiles." Sure, an ASI would be many orders of magnitude smarter than these machines, but Pinker reminds us of the AI hyperbole we've been fed for decades: "The worry that an AI system would be so clever at attaining one of the goals programmed into it (like commandeering energy) that it would run roughshod over the others (like human safety) assumes that AI will descend upon us faster than we can design fail-safe precautions. The reality is that progress in AI is hype-defyingly slow, and there will be plenty of time for feedback from incremental implementations, with humans wielding the screwdriver at every stage."[ 22] Former Google CEO Eric Schmidt agrees, responding to the fears expressed by Hawking and Musk this way: "Don't you think the humans would notice this, and start turning off the computers?" He also noted the irony in the fact that Musk has invested $1 billion into a company called OpenAI that is "promoting precisely AI of the kind we are describing."[ 23] Google's own DeepMind has developed the concept of an AI off-switch, playfully described as a "big red button" to be pushed in the event of an attempted AI takeover. "We have proposed a framework to allow a human operator to repeatedly safely interrupt a reinforcement learning agent while making sure the agent will not learn to prevent or induce these interruptions," write the authors Laurent Orseau from DeepMind and Stuart Armstrong from the Future of Humanity Institute, in a paper titled "Safely Interruptible Agents." They even suggest a precautionary scheduled shutdown every night at 2 AM for an hour so that both humans and AI are accustomed to the idea. "Safe interruptibility can be useful to take control of a robot that is misbehaving and may lead to irreversible consequences, or to take it out of a delicate situation, or even to temporarily use it to achieve a task it did not learn to perform or would not normally receive rewards for this."[ 24] As well, it is good to keep in mind that artificial intelligence is not the same as artificial consciousness. Thinking machines may not be sentient machines. Finally, Andrew Ng of Baidu responded to Elon Musk's ASI concerns by noting (in a jab at the entrepreneur's ambitions for colonizing the red planet) it would be "like worrying about overpopulation on Mars when we have not even set foot on the planet yet."[ 25] Both Utopian and dystopian visions of AI are based on a projection of the future quite unlike anything history has given us. Yet, even Ray Kurzweil's "law of accelerating returns," as remarkable as it has been has nevertheless advanced at a pace that has allowed for considerable ethical deliberation with appropriate checks and balances applied to various technologies along the way. With time, even if an unforeseen motive somehow began to emerge in an AI we would have the time to reprogram it before it got out of control. That is also the judgment of Alan Winfield, an engineering professor and co-author of the Principles of Robotics, a list of rules for regulating robots in the real world that goes far beyond Isaac Asimov's famous three laws of robotics (which were, in any case, designed to fail as plot devices for science fictional narratives).26 Winfield points out that all of these doomsday scenarios depend on a long sequence of big ifs to unroll sequentially: "If we succeed in building human equivalent AI and if that AI acquires a full understanding of how it works, and if it then succeeds in improving itself to produce super-intelligent AI, and if that super-AI, accidentally or maliciously, starts to consume resources, and if we fail to pull the plug, then, yes, we may well have a problem. The risk, while not impossible, is improbable."[ 27]

### 2NC---AT: Scamming !

### 2NC---UQ

**The FTC is also likely to win the Facebook case based on the refiling –** Facebook is grey in the graph

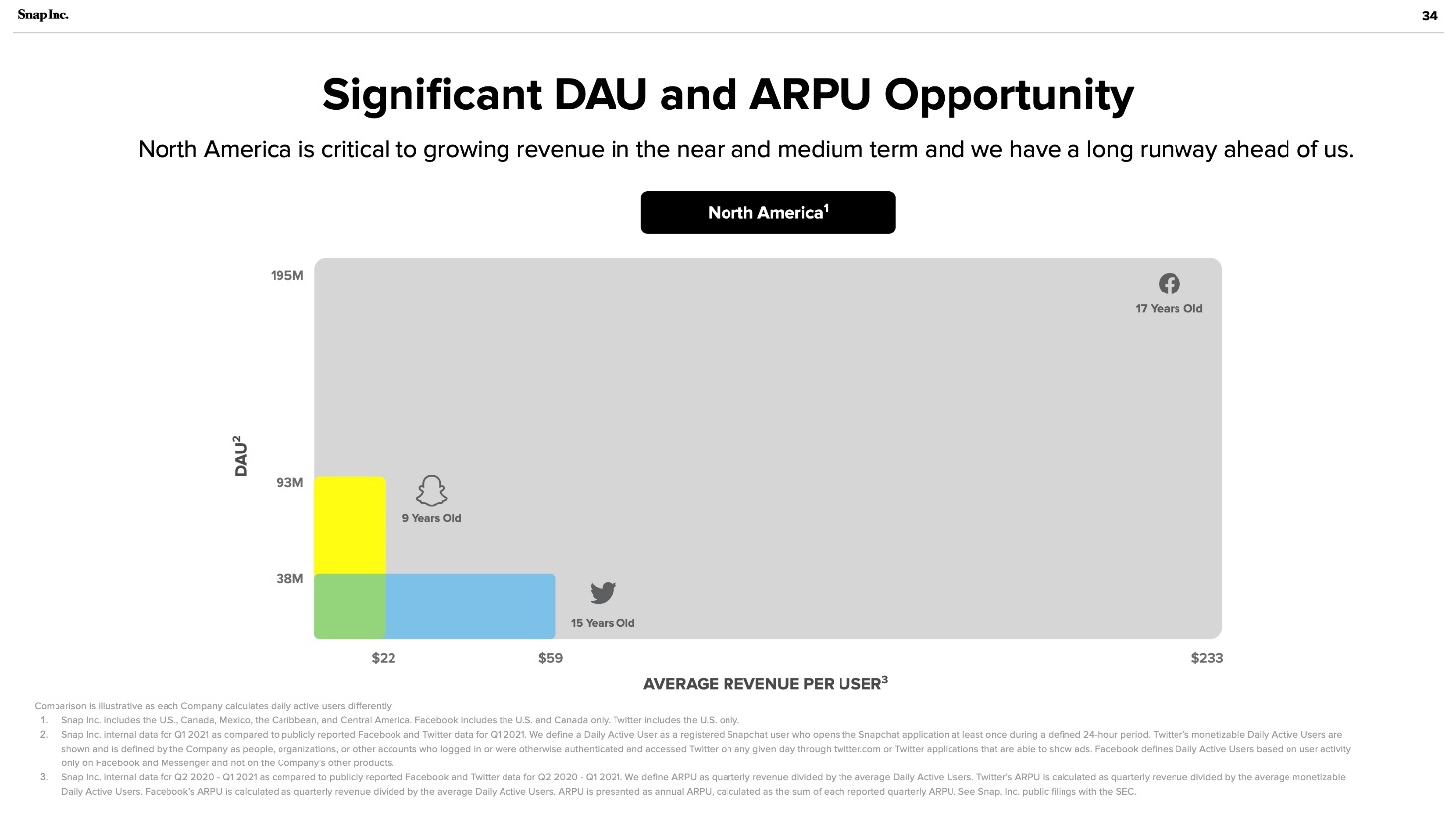
**Liss 21** (Daniel Liss, founder and CEO of Dispo, digital disposable camera social network, co-founder and partner of Pilot Labs, venture capital firm, JD Stanford University Law School, MBA Stanford University Graduate School of Business, AB History, Harvard University, “Today’s real story: The Facebook monopoly,” TechCrunch, 8-19-2021, https://techcrunch.com/2021/08/19/todays-real-story-the-facebook-monopoly/)

The problem

**According to the court**, the FTC must meet a **two-part test**: First, the FTC must **define the market** in which Facebook has monopoly power, established by the D.C. Circuit in Neumann v. Reinforced Earth Co. (1986). This is the market for personal social networking services, which includes messaging.

Second, the FTC must **establish that Facebook controls a dominant share** of that market, which courts have defined as **60% or above**, established by the 3rd U.S. Circuit Court of Appeals in FTC v. AbbVie (2020). The **right metric** for this market share analysis is **unequivocally revenue** — **daily active users (DAU) x average revenue per user (ARPU)**. And **Facebook controls over 90%**.

The answer to the FTC’s problem is hiding in plain sight: Snapchat’s investor presentations:



Snapchat July 2021 investor presentation: Significant DAU and ARPU Opportunity. Image Credits: Snapchat

**This is a chart of Facebook’s monopoly** — **91% of the personal social networking market**. The **gray blob** looks awfully like a **vast oil deposit**, successfully drilled by Facebook’s Standard Oil operations. **Snapchat** and **Twitter** are the small wildcatters, **nearly irrelevant** compared to Facebook’s scale. It should not be lost on any market observers that **Facebook once tried to acquire both** companies.

The market Includes messaging

The FTC initially claimed that Facebook has a monopoly of the “personal social networking services” market. The complaint excluded “mobile messaging” from Facebook’s market “because [messaging apps] (i) lack a ‘shared social space’ for interaction and (ii) do not employ a social graph to facilitate users’ finding and ‘friending’ other users they may know.”

This is incorrect because messaging is inextricable from Facebook’s power. Facebook demonstrated this with its WhatsApp acquisition, promotion of Messenger and prior attempts to buy Snapchat and Twitter. Any personal social networking service can expand its features — and Facebook’s moat is contingent on its control of messaging.

The more time in an ecosystem the more valuable it becomes. Value in social networks is calculated, depending on whom you ask, algorithmically (Metcalfe’s law) or logarithmically (Zipf’s law). Either way, in social networks, 1+1 is much more than 2.

Social networks become valuable based on the ever-increasing number of nodes, upon which companies can build more features. Zuckerberg coined the “social graph” to describe this relationship. The monopolies of Line, Kakao and WeChat in Japan, Korea and China prove this clearly. They began with messaging and expanded outward to become dominant personal social networking behemoths.

In today’s refiling, the FTC explains that Facebook, Instagram and Snapchat are all personal social networking services built on three key features:

“First, personal social networking services are built on a social graph that maps the connections between users and their friends, family, and other personal connections.”

“Second, personal social networking services include features that many users regularly employ to interact with personal connections and share their personal experiences in a shared social space, including in a one-to-many ‘broadcast’ format.”

“Third, personal social networking services include features that allow users to find and connect with other users, to make it easier for each user to build and expand their set of personal connections.”

Unfortunately, this is only partially right. In social media’s treacherous waters, as the FTC has struggled to articulate, feature sets are routinely copied and cross-promoted. How can we forget Instagram’s copying of Snapchat’s stories? Facebook has ruthlessly copied features from the most successful apps on the market from inception. Its launch of a Clubhouse competitor called Live Audio Rooms is only the most recent example. Twitter and Snapchat are absolutely competitors to Facebook.

Messaging must be included to demonstrate Facebook’s breadth and voracious appetite to copy and destroy. WhatsApp and Messenger have over 2 billion and 1.3 billion users respectively. Given the ease of feature copying, a messaging service of WhatsApp’s scale could become a full-scale social network in a matter of months. This is precisely why Facebook acquired the company. Facebook’s breadth in social media services is remarkable. But the FTC needs to understand that messaging is a part of the market. And this acknowledgement would not hurt their case.

The metric: Revenue shows Facebook’s monopoly

Boasberg believes revenue is not an apt metric to calculate personal networking: “The overall revenues earned by PSN services cannot be the right metric for measuring market share here, as those revenues are all earned in a separate market — viz., the market for advertising.” He is confusing business model with market. Not all advertising is cut from the same cloth. In today’s refiling, the FTC correctly identifies “social advertising” as distinct from the “display advertising.”

But it goes off the deep end trying to avoid naming revenue as the distinguishing market share metric. Instead the FTC cites “time spent, daily active users (DAU), and monthly active users (MAU).” In a world where Facebook Blue and Instagram compete only with Snapchat, these metrics might bring Facebook Blue and Instagram combined over the 60% monopoly hurdle. But the FTC does not make a sufficiently convincing market definition argument to justify the choice of these metrics. Facebook should be compared to other personal social networking services such as Discord and Twitter — and their correct inclusion in the market would undermine the FTC’s choice of time spent or DAU/MAU.

Ultimately, cash is king. Revenue is what counts and what the FTC should emphasize. As Snapchat shows above, revenue in the personal social media industry is calculated by ARPU x DAU. The personal social media market is a different market from the entertainment social media market (where Facebook competes with YouTube, TikTok and Pinterest, among others). And this too is a separate market from the display search advertising market (Google). Not all advertising-based consumer technology is built the same. Again, advertising is a business model, not a market.

In the media world, for example, Netflix’s subscription revenue clearly competes in the same market as CBS’ advertising model. News Corp.’s acquisition of Facebook’s early competitor MySpace spoke volumes on the internet’s potential to disrupt and destroy traditional media advertising markets. Snapchat has chosen to pursue advertising, but incipient competitors like Discord are successfully growing using subscriptions. But their market share remains a pittance compared to Facebook.

An alternative pleading: Facebook’s market power suppresses wages in the creator economy

The **FTC** has **correctly argued** for the smallest possible market for their **monopoly definition**. **Personal social networking**, of which **Facebook controls at least 80%**, should **not** (in their strongest argument) **include entertainment**. This is the **narrowest argument** to make with the **highest chance of success**.

But they could choose to make a broader argument in the alternative, one that takes a bigger swing. As Lina Khan famously noted about Amazon in her 2017 note that began the New Brandeis movement, the traditional economic consumer harm test does not adequately address the harms posed by Big Tech. The harms are too abstract. As White House advisor Tim Wu argues in “The Curse of Bigness,” and Judge Boasberg acknowledges in his opinion, antitrust law does not hinge solely upon price effects. Facebook can be broken up without proving the negative impact of price effects.

However, Facebook has hurt consumers. Consumers are the workers whose labor constitutes Facebook’s value, and they’ve been underpaid. If you define personal networking to include entertainment, then YouTube is an instructive example. On both YouTube and Facebook properties, influencers can capture value by charging brands directly. That’s not what we’re talking about here; what matters is the percent of advertising revenue that is paid out to creators.

YouTube’s traditional percentage is 55%. YouTube announced it has paid $30 billion to creators and rights holders over the last three years. Let’s conservatively say that half of the money goes to rights holders; that means creators on average have earned $15 billion, which would mean $5 billion annually, a meaningful slice of YouTube’s $46 billion in revenue over that time. So in other words, YouTube paid creators a third of its revenue (this admittedly ignores YouTube’s non-advertising revenue).

Facebook, by comparison, announced just weeks ago a paltry $1 billion program over a year and change. Sure, creators may make some money from interstitial ads, but Facebook does not announce the percentage of revenue they hand to creators because it would be insulting. Over the equivalent three-year period of YouTube’s declaration, Facebook has generated $210 billion in revenue. one-third of this revenue paid to creators would represent $70 billion, or $23 billion a year.

Why hasn’t Facebook paid creators before? Because it hasn’t needed to do so. Facebook’s social graph is so large that creators must post there anyway — the scale afforded by success on Facebook Blue and Instagram allows creators to monetize through directly selling to brands. Facebooks ads have value because of creators’ labor; if the users did not generate content, the social graph would not exist. Creators deserve more than the scraps they generate on their own. Facebook suppresses creators’ wages because it can. This is what monopolies do.

Facebook’s Standard Oil ethos

Facebook has long been the Standard Oil of social media, using its core monopoly to begin its march upstream and down. Zuckerberg announced in July and renewed his focus today on the metaverse, a market Roblox has pioneered. After achieving a monopoly in personal social media and competing ably in entertainment social media and virtual reality, Facebook’s drilling continues. Yes, Facebook may be free, but its monopoly harms Americans by stifling creator wages. The antitrust laws dictate that consumer harm is not a necessary condition for proving a monopoly under the Sherman Act; monopolies in and of themselves are illegal. **By refiling the correct market definition and marketshare**, the **FTC stands more than a chance. It should win**.

# 1NR

## ptx

### 2NC – ! O/V

#### AND, expectations of that dynamic 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.

#### Glasgow success is independently key to check global spread of nuclear waste and radiation, and antibiotic-resistant pathogens

Castronuovo 21 (Celine Castronuovo, breaking news reporter at The Hill, former Editor-in-Chief of MediaFile, BA Journalism and Mass Communication, International Affairs, George Washington University, “Warming Arctic could spread nuclear waste, unknown viruses: report,” The Hill, 10-1-2021, <https://thehill.com/policy/equilibrium-sustainability/574904-warming-arctic-could-spread-nuclear-waste-unknown-viruses?amp>)

As temperatures continue to rise in the Arctic, thawing frozen land that scientists have already said contributes to greenhouse gas emissions could also spread nuclear waste and radiation, as well as unknown viruses and antibiotic-resistant bacteria, according to new research released Thursday.

A report published in the scientific journal Nature Climate Change noted that the permanently frozen land, called permafrost, thawing in the Arctic at increasing rates due to global warming could potentially release radioactive waste from Cold War-era weapons production and damage from mining.

The study's researchers noted that between 1955 to 1990, the Soviet Union conducted a total of 130 nuclear weapons tests in the atmosphere and near the ocean's surface off the coast of northwest Russia.

While the Russian government said it has since launched a cleanup of the area, the authors of Thursday's study found that high levels of radioactive substances have recently been detected in the area.

Additionally, the authors said that deep permafrost in the Arctic, which is roughly a million years old, contains bacteria that, because frozen, has not been exposed to modern antibiotics on Earth.

The report noted that the potential thawing of the permafrost could melt into oceans and eventually create antibiotic-resistant strains of existing bacteria.

One of the report's authors, Arwyn Edwards from Wales' Aberystwyth University, told the BBC that while much of the Arctic still remains unknown, changes in the region's "climate and ecology will influence every part of the planet as it feeds carbon back to the atmosphere and raises sea levels."

"This review identifies how other risks can arise from the warming Arctic," he said. "It has long been a deep-freezer for a range of harmful things, not just greenhouse gases."

"We need to understand more about the fate of these harmful microbes and pollutants and nuclear materials to properly understand the threats they may pose," he argued.

Edwards called on world leaders to take "demonstrable action" at next month's 2021 United Nations Climate Change Conference in Glasgow, noting that a starting point could be investing in more research on the potential impacts of thawing permafrost.

The report comes after a German study released in August found that a heatwave in 2020 revealed a source of methane emissions "potentially in much higher amounts" from rock formations thawing in the Arctic permafrost that could be "much more dangerous" than previously thought.

#### Radiation accumulation makes extinction inevitable

Nadesan 14 (Majia H. Nadesan, Associate Dean and Professor of Communication in the School of Social and Behavioral Sciences, New College of Interdisciplinary Arts and Sciences, Arizona State University, former assistant professor, Syracuse University, Ph.D. communication studies, Purdue University, B.S., M.S. San Diego State University, “3 years since Fukushima: nuclear power 'road to our extinction' – expert,” Voice of Russia News, 3-10-2014, http://voiceofrussia.com/2014\_03\_10/3-years-since-Fukushima-nuclear-power-road-to-our-extinction-expert-3829/)

Three years after the Fukushima catastrophe, Japan’s stricken power plant is still struggling to contain radioactive water leaks that are making the area uninhabitable, while TEPCO’s effort to clean up what remains of the crippled nuclear site has turned into a disaster of its own. The Voice of Russia spoke with Majia H. Nadesan, Associate Dean of the New College at Arizona State University and the author of a blog on Fukushima, who believes humanity might have already “forged its extinction” with nuclear technology and is now just waiting for it to unfold. Three years ago, a disastrous tsunami and earthquake killed nearly 20,000 people and settled the nuclear crisis in Japan. Did the region manage to recover from the catastrophe and what are the current results of its recovery? The situation at the Daiichi site remains unstable. Contaminated water production is continuing as ground water and the water injected for cooling encounter uncontained nuclear fuel. And TEPCO has admitted that ground water is indeed encountering uncontained nuclear fuel, and some of that water is ending up in the ocean, some of that water is saturating the site and some of that water is being captured and stored in tanks, and those tanks are emitting radiation, including X-rays and Beta-radiation. There are about a thousand tanks that hold approximately 350,000 tons of highly contaminated water and the IAEA is recommending that some of that water, the less contaminated among it, be put into the ocean. So what we are having is a situation of catastrophic contamination that is ongoing for the Pacific ocean and increased water saturation at the site, simultaneously atmosphere contamination is continuing through emissions and also through the reactions of the contaminated water in the tanks. So we have a situation of great instability and ongoing significant levels of contamination. What are the other consequences of Fukushima disaster? What have been done to struggle against them? Is it possible that the region will be safe to live in again? The thing is that people in Japan are living in contaminated land. For example, The Asahi Shimbun described one resident who is living near 500 tons of stored radioactive waste measuring at least 8,000 becquerels per kilogram of cesium and that is the only radionulcide that they provided the measurements for, there could be uranium and plutonium, other nuclear waste stored there as well. So people are living amidst contaminated waste; reservoirs in Japan are contaminated. There was an article also in The Asahi Shimbun, that indicated that the highest level of contamination measured in one of the contaminated reservoirs was 390,000 becquerels per kilogram of soil at the bottom of the reservoir, so people are potentially going to be drinking contaminated water. People are living in areas that measure up to twenty millisieverts a year and there is even temporary living that is available in more contaminated areas. And people who are living in areas of twenty millisieverts a year or less are responsible for clean-up, and the clean-up plan doesn't address hot spots or recontamination and it doesn't help people dispose of the radioactive waste. People are living in highly contaminated areas with children. There have been some surveys that looked at what the consequences are for children: diabetes rates have increased, thyroid nodules have increased, thyroid cancer has increased. And there was one recent survey that was published in The Mainichi that one in four children in the disaster hit areas need mental care for problematic behavior and that was interesting because the problematic behavior included things such as dizziness and nausea and symptoms that might be caused by psychological problems but also could be symptomatic of radiation exposure. So the consequences of this disaster is that people who are living in highly contaminated areas and the region are not going to be safe again for generations because the amount of radiation contamination is increasing daily. So it is going to be land of dispossessed people. What prospects does the region have in its future development? Is there any risk that Fukushima disaster can repeat? The thing that so tragic is that radiation damage accumulates across time for a variety of reasons. First, because animals and plants and people all bioaccumulate radionuclides. And so across time people and animals and vegetation will become more contaminated rather than less contaminated. And the effects of radiation don't just affect one generation, they affect multiple generations. There is quite a bit of research, done in the Chernobyl region, for example, by Anders Møller and Timothy Mousseau, who found that the increased background radiation from Chernobyl has significant effects on immunology, mutation and disease frequency across animal species and in fact they found decline in population and long-term mutation accumulations. Over time, each generation inherits the mutations of their parents and acquires their own. And then children have even more germline cell mutation and micro delusions in DNA than their parents. Micro-deletions in DNA are increasingly linked to diseases such as autism and congenital heart disease. So we can assume that over the long-term the health of the people in the zones and the animals in the zones – their health also is going to decrease as bioaccumulation, bio-magnification and trans-generational mutations increase. And it is a human tragedy what is occurring there. It can happen anywhere in the world because of a solar flare that knocks out a transformer, an earthquake, for example, that might affect Diablo Canyon in California which is sitting on a fault, terrorism - all of these forces could create another Fukushima any place in the world. Nuclear power is going to be the road to our extinction. We don't know what the trans-generational effects are going to be, but we know they are going to be detrimental. And as humans acquire more of them, their ability to successfully reproduce is going to decline. So we might already have forged our extinction and we are just waiting for it to unfold. We need to make changes very quickly to find ways of dealing successfully with storing nuclear waste. And we've just discovered in New Mexico of the US, there is a site near Carlsbad, they've just had a salt cave-in collapse and there is nuclear waste which is now venting into the atmosphere, even though it is being filtered, it is still coming out. That is not a successful solution. So we have to find solutions that work for nuclear waste and we need to find alternative energy that will allow us to sustain civilization in the future.

#### So does ABR

Srivatsa 17 (Kadiyali M. Srivatsa, doctor, inventor, and publisher, worked in acute and intensive pediatric care in British hospitals, “Superbug Pandemics and How to Prevent Them,” American Interest, 1-12-2017, https://www.the-american-interest.com/2017/01/12/superbug-pandemics-and-how-to-prevent-them/)

It is by now no secret that the human species is locked in a race of its own making with “superbugs.” Indeed, if popular science fiction is a measure of awareness, the theme has pervaded English-language literature from Michael Crichton’s 1969 Andromeda Strain all the way to Emily St. John Mandel’s 2014 Station Eleven and beyond. By a combination of massive inadvertence and what can only be called stupidity, we must now invent new and effective antibiotics faster than deadly bacteria evolve—and regrettably, they are rapidly doing so with our help. I do not exclude the possibility that bad actors might deliberately engineer deadly superbugs.1 But even if that does not happen, humanity faces an existential threat largely of its own making in the absence of malign intentions.

As threats go, this one is entirely predictable. The concept of a “black swan,” Nassim Nicholas Taleb’s term for low-probability but high-impact events, has become widely known in recent years. Taleb did not invent the concept; he only gave it a catchy name to help mainly business executives who know little of statistics or probability. Many have embraced the “black swan” label the way children embrace holiday gifts, which are often bobbles of little value, except to them. But the threat of inadvertent pandemics is not a “black swan” because its probability is not low. If one likes catchy labels, it better fits the term “gray rhino,” which, explains Michele Wucker, is a high-probability, high-impact event that people manage to ignore anyway for a raft of social-psychological reasons.2 A pandemic is a quintessential gray rhino, for it is no longer a matter of if but of when it will challenge us—and of how prepared we are to deal with it when it happens.

We have certainly been warned. The curse we have created was understood as a possibility from the very outset, when seventy years ago Sir Alexander Fleming, the discoverer of penicillin, predicted antibiotic resistance. When interviewed for a 2015 article, “The Most Predictable Disaster in the History of the Human Race, ” Bill Gates pointed out that one of the costliest disasters of the 20th century, worse even than World War I, was the Spanish Flu pandemic of 1918-19. As the author of the article, Ezra Klein, put it: “No one can say we weren’t warned. And warned. And warned. A pandemic disease is the most predictable catastrophe in the history of the human race, if only because it has happened to the human race so many, many times before.”3

Even with effective new medicines, if we can devise them, we must contain outbreaks of bacterial disease fast, lest they get out of control. In other words, we have a social-organizational challenge before us as well as a strictly medical one. That means getting sufficient amounts of medicine into the right hands and in the right places, but it also means educating people and enabling them to communicate with each other to prevent any outbreak from spreading widely.

#### 1. Turns emerging tech

Anderson 2-22-2021, Chairman & CEO of CG/LA Infrastructure, a firm focused on global infrastructure project development, driving productivity across countries, and maximizing the benefits of infrastructure for people in the U.S. and around the world (Norman, “The Biden Infrastructure Plan - 5 Actions To Jolt Us Awake, Now,” *Forbes*, <https://www.forbes.com/sites/normananderson/2021/02/22/the-biden-infrastructure-plan5-actions-to-jolt-us-awake-now/?sh=1d72f17b2ebd>)//BB

The Focus Needs to be on Creating Project Results. Producing immediate results is necessary for our political system - how does this work, when the average highway project takes 9.5 years to move through the approval process, and 4.5 years after that for results - say cars, or autonomous trucks, zipping down the freeway? Lucky for us we are not starting from scratch - we have an enormous pent-up backlog of projects that can start showing results… this year.

By results I don’t just mean creating new and well-paying jobs, or saving the thousands of struggling professional service firms that are in danger of turning off their computers, rather what I mean is addressing the Administration’s priorities in the way that infrastructure professionals think about investment (yes, these people exist - and they are as smart as economists!):

* Brownfield projects - you can revitalize Army Corps reservoirs, or put 5G on interstate highways, or authorize the Gateway tunnel, or make rural broadband really fast, right now, tomorrow,
* Greenfield projects - infrastructure is a ‘thinking short, thinking long’ business, so while you are speeding up investment in ultra high voltage transmission lines, you can also get moving on the Brent Spence Bridge, and by the end of 2024 you can get butts in seats on the Dallas/Houston high speed rail project, and the Great Lakes Basin highway project, and
* New Infrastructure - this is the low-hanging fruit, and the battlefield between China and the U.S. for global influence, period. Largely private, and almost wholly environmentally friendly, this is where our economy has tremendous strengths that we are not seeing. It’s also the battlefield - AI, Machine Learning, 5G, Autonomy, High Voltage Transmission, along with high speed rail - that is critical to the achievement of every single goal that our country can set for the future.

Every infrastructure person - and every citizen - across the country can tell you the five projects that they’d like to see happen. The map above is a 500 project stimulus map that my firm, CG/LA infrastructure, created by polling people around the country. Why not engage citizens now, and show results this year, picking up steam in 2022 and in 2023? Infrastructure is 5G/AI and Electrification, and it Needs a Budget. The infrastructure of the future is going to be as different as cellular is from fixed line telephony, and that future is coming at us extremely fast… The 2020’s will be a decade of disruption - the greatest period of disruption in 100 years or more. We can either continue our course, and try and weather the storm, or we can make the kind of strategic investments that will allow us to lead - with enormous environmental and equity benefits, coupled with the kind of productivity increases that come from rapid innovation. There couldn’t be a bigger difference between the way that China is going about new infrastructure creation, with their top down, devil may care about the individual approach, and our celebration of the individual. The problem - in democracies around the world - is that we are absent, and so China is winning. Leaders Set Goals, Achieve Goals - and Create Trust. Who is in charge of infrastructure? Without an infrastructure office it is hard to tell, and this is a fatal flaw problem. The presidency needs to to bring everyone together to discuss what world we want to create, what our infrastructure vision going forward will look like. This needs to happen fast - and then we need to set goals that we all agree to: projects completed, time to project approvals, life expectancy, reduction of traffic congestion, reduction in carbon by sector, even increases in infrastructure equity. I am a business guy - everything is opportunity. Then we (all of us) need to row hard in the same direction, and achieve those goals. Action This Day. If we can get this right, the results for all of us will be extraordinary - domestic growth, environmental leadership and an injection of strength into the global democratic model. Unimaginable things can quickly be envisioned, and developed, including the return of manufacturing (advanced and distributed manufacturing) to our newly digitized and electrified heartland. Infrastructure can bring us together, but it is a very heavy lift - as in war, the first thing a president things about in the morning, and the last thing he thinks about before going to bed at night.

### AT: timeframe

#### Next week doesn’t mean tomorrow or Monday, buy a calendar – they have no evidence that waiting past that point decks the bill, but there’s only a risk the aff derails that timeframe - Votes in the next few days, assumes biden travel

Duehren 10-29 (Andrew Duehren, covers Congress and U.S. politics from The Wall Street Journal's Washington bureau, “Democrats Tackle Final Details of Biden’s $1.85 Trillion Framework,” Wall Street Journal, 10-29-2021, https://www.wsj.com/articles/democrats-tackle-final-details-of-bidens-1-85-trillion-framework-11635536447)

Democrats turned to finalizing the details of President Biden’s $1.85 trillion social-spending and climate framework, with some lawmakers pushing to add measures lowering prescription drug prices and repealing a cap on the state and local tax deduction.

The White House released the framework on Thursday in a bid to quickly resolve the push-and-pull between the party’s progressive and centrist members, hoping to show progress on Mr. Biden’s agenda as he headed overseas for a major climate conference.

House Speaker Nancy Pelosi (D., Calif.) used the framework to push for an immediate vote on a parallel, roughly $1 trillion infrastructure bill that progressives have held up for months to ensure movement on the social-spending and climate legislation. Progressives endorsed the framework Thursday, but continued to block the infrastructure vote, saying they needed more time to review the proposal and translate it into legislative text.

Rep. Pramila Jayapal (D., Wash.), the chairwoman of the Congressional Progressive Caucus, said she thought House Democrats could move forward with a vote on both pieces of legislation next week.

“We got to the best possible place we could get to, and now we’re ready to pass both bills through the House,” she told CNN Friday, saying votes could come within days.

Ms. Jayapal said that progressives support the legislation as it is laid out in the framework, which calls for funding for universal prekindergarten, child-care subsidies and a series of tax credits incentivizing reduced carbon emissions, among other measures. Democrats dropped several progressive priorities, including a national paid-leave program, during the talks.

“I think we’ve made a lot of progress in a short amount of time,” said Rep. Colin Allred (D., Texas) on MSNBC Friday. “The main things have been ironed out. And now we just have to have the confidence in each other basically to take the votes.”

#### It’ll be quick

Wehrman 10-28 (Jessica Wehrman, Washington correspondent, covers transportation and infrastructure for Roll Call, BS journalism, Ohio University, “House punts on infrastructure, passes highway bill extension,” 10-28-2021, https://www.rollcall.com/2021/10/28/house-punts-on-infrastructure-passes-highway-bill-extension/)

Both the House and Senate Thursday moved to extend the 2015 surface transportation law through Dec. 3 after House Democrats fell short in securing enough progressive votes to pass a bipartisan infrastructure bill that represents a cornerstone of President Joe Biden’s domestic agenda.

Progressives have tied their support for that bipartisan bill, which would reauthorize federal highway programs for five years, to a larger package of Biden’s domestic priorities, including child care and climate change. The extension would allow the government to sustain highway and transit programs through Dec. 3.

Even before the House voted 358-59 to extend the authorizing law, the Senate agreed by unanimous consent to deem the measure passed, once it gets to the Senate, if it’s identical to a Senate version.

Though Biden met with the caucus Thursday to announce a smaller framework and urge them to pass it, progressives remained unconvinced that Senate Democratic holdouts Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona would endorse the bill. Though Sinema sent out a statement supportive of the framework, she did not explicitly say she would vote for it. Manchin, too, was noncommittal, though late Thursday he tweeted praise for the framework.

Facing an Oct. 31 deadline to reauthorize the current highway law, leadership Thursday evening abruptly opted for a short-term extension when they realized they did not have the votes for the bipartisan bill.

“If we vote for the BIF [bipartisan infrastructure framework], I think that’s it,” said Rep. Juan C. Vargas, D-Calif., a member of the Congressional Progressive Caucus. “I think we lose the other bill. I don’t trust what the senators are going to do.”

“Hell no to the BIF,” said Rep. Rashida Tlaib, D-Mich., a fellow progressive.

That resistance didn’t abate even after the House Rules Committee met to debate the text of the larger measure, with some progressives saying they were skeptical that Manchin and Sinema would actually back the plan.

“Basically, it’s trust of Manchin and Sinema,” said Rep. Steve Cohen, D-Tenn., summing up progressive concerns after the CPC met Thursday morning.

A source familiar with negotiations said the House will return next week to continue negotiations on both packages.

The delay frustrated moderate Democrats, who said they were anxious to demonstrate results after months of negotiations. "The fact is, is that we still got to come back next week, and we got to face the infrastructure package and work on the framework," said Rep. Jim Costa, D-Calif. "But it wasn't a good day."

House Democratic leadership had felt urgency to pass the bipartisan infrastructure bill, which the Senate passed Aug. 10, in order to give Biden a win before his appearance this weekend at a meeting of the Group of 20 industrial and emerging nations; they’re also concerned about a tight Nov. 2 gubernatorial race in Virginia, where Democrat Terry McAuliffe faces an aggressive challenge from Republican Glenn Youngkin.

“We cannot send our president across the water to lead the world without showing leadership ourselves,” said Rep. Hank Johnson, D-Ga., a progressive who said early Thursday that he would vote for the bipartisan infrastructure bill if it were put to a vote.

Urgent deadline

But it was the Oct. 31 deadline that caused the most urgency.

“Let’s do it in a timely fashion,” urged Speaker Nancy Pelosi at her weekly press conference, hours before abandoning plans to put the bipartisan bill up for a vote. “Let’s just not keep having postponements and leaving any doubt as to when this will happen.”

This will be the third time the surface transportation law has been extended; it was first extended for a year in September 2020 and extended again Oct. 2.

Before the House voted to extend the law Thursday, the CPC sent out a statement saying it “overwhelmingly” supported the framework of the larger bill, but still wanted to see legislative text before backing the infrastructure bill.

“I think it’s going to be quick,” said CPC Chair Pramila Jayapal, D-Wash., on CNN, adding they wanted to send Biden to the G-20 with an endorsement of the framework. “Let us get through it…I really think it’s going to be quick here for us to pass both these bills through the House.”

### AT: PC Not Key

#### Every drop of PC is key

Everett et al 21 (John Burgess Everett, co-congressional bureau chief for POLITICO, specializing in the Senate, BA journalism, University of Maryland College Park; and Laura Barrón-López, White House Correspondent for POLITICO, formerly covered Democrats for the Washington Examiner, Congress for HuffPost, and energy and environment policy for The Hill, BA political science, California State University, Fullerton; “Dems call in big gun as they face huge Hill tests,” POLITICO, 9-16-2021, https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952)

The next few months will push President Joe Biden to wield every drop of his influence over Congress.

Democrats are plunging into messy internal debates over social programs from child care to drug pricing as they try to beat back GOP resistance on voting rights while steering the United States away from economic catastrophe. And in order to avert a government shutdown, avoid a debt default and fight ballot access restrictions passed in some GOP states, Democratic lawmakers are urging Biden to get more directly involved.

Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.”

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan.

Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo.

“I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.”

Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times.

“Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues.

Andrew Bates, a spokesperson for Biden, said that Biden and his administration "are in frequent touch with Congress about each key priority: protecting the sacred right to vote, ensuring our economy delivers for the middle class and not just those at the top, and preventing needless damage to the recovery from the second-worst economic downturn in American history.”

To help corral all 50 Senate Democrats for the social spending bill, the president and his party need to create an “echo chamber” around its substance, said Celinda Lake, a pollster on Biden’s campaign. But that won't be easy. Manchin has told colleagues he’s worried about whether the bill’s safety net, climate action and tax reforms will be popular in his state, according to one Senate Democrat. He's also said he won't support a measure at the current spending level: $3.5 trillion.

If Biden can hammer home the popular aspects of the spending plan, it may help assuage Manchin and improve his whip count in Congress. Underscoring the degree to which he's become the face of the multi-trillion dollar reconciliation bill, a Democratic aide said the party is increasingly seeking to frame it as Biden’s agenda, not that of Sen. Bernie Sanders (I-Vt.) or any single Democrat.

“People think they like the reconciliation package, but they really don't know what's in it,” said Lake, who added that her polling shows popularity for the measure, particularly among women and seniors.

The coming months will also challenge Biden’s relationship with Republicans, who are threatening to block a debt limit hike after many of them supported a suspension or increase three times under former President Donald Trump. Biden campaigned as a Democrat who could work with Republicans, and he succeeded this summer by rounding up 19 Senate GOP votes for a $550 billion infrastructure bill.

Yet he’s running into a brick wall in convincing Senate Minority Leader Mitch McConnell to provide at least 10 GOP votes to lift the nation's borrowing limit. Republicans say Biden’s dip in the polls isn’t driving their strategy on the debt ceiling. But it’s not helping either.

“I don’t think anything in the last month has increased the likelihood that he can now create an atmosphere of: Let’s work together,” said Sen. Roy Blunt (R-Mo.), who voted for the infrastructure bill and debt ceiling increases under Trump.

The White House is, so far, sticking by its plan to try and call McConnell’s bluff. Aides in the West Wing consider attaching a debt ceiling suspension or increase to a government funding measure the best way to pressure Republicans on the routine step required by law. Should that approach fail, they may be forced to separate the two fiscal measures to avert a shutdown.

On the debt limit, congressional Democrats are in lockstep with the administration's strategy. But they're looking for Biden to exhibit more of his arm-twisting and back-slapping skills on their social spending plan and their bid to shore up voting rights protections.

Biden “knows better than anyone the power of the United States [presidency] in persuading and sometimes cajoling the key members of Congress, when push comes to shove,” said Sen. Richard Blumenthal (D-Conn.).

### Intrinsicness (boo :/)

### AT: Won’t Pass – T/L / Manchin+Sinema

#### Progressives are locked in, despite the failed House vote – only question is whether Manchin and Sinema publicly commit

Sargent 10-29 (Greg Sargent, columnist covering national politics at The Washington Post, former political analyst at Talking Points Memo, New York Magazine and the New York Observer, BA English, Hunter College, “Opinion: Inside Biden’s surprising confidence that he’s on the cusp of a big victory,” The Washington Post, 10-29-2021, https://www.washingtonpost.com/opinions/2021/10/29/biden-framework-reconciliation-pathway/)

Looked at in one way, the failure of the House to pass the bipartisan infrastructure bill on Thursday was a major setback for President Biden. It means he heads into the international climate conference without being able to say the United States took a big leap toward delivering on its climate agenda, which could complicate his ability to lead.

That is obviously something we’d hoped to avoid. And let’s be clear: It’s still very uncertain whether Biden’s agenda will ultimately succeed or implode.

But the White House seems strangely, eerily confident about what’s happening right now. If you read between the lines of the doomscrolling coverage, what emerges is this: Improbably, Biden and his advisers seem to think the latest events have placed them on the brink of securing his agenda.

This is despite the fact that this week, in some ways, things went badly awry. When Biden introduced his framework for the Build Back Better reconciliation bill Thursday, Sens. Joe Manchin III (D-W.Va.) and Kyrsten Sinema (D-Ariz.) conspicuously failed to endorse it. That raised questions about whether the White House seriously miscalculated.

Then, when House Speaker Nancy Pelosi (D-Calif.) tried to hold a vote on the bipartisan infrastructure bill that already passed the Senate — to deliver Biden a victory before going abroad — progressives refused to support it, fearing Manchin and Sinema would ultimately renege on the reconciliation bill. Then everyone left to regroup, raising more questions about who’s running the show.

That looks like a big legislative mess and a spectacular failure at managing the Democratic coalition, right? Well, the White House sees it differently. Punchbowl News explains why:

Administration officials argue that no one will care in the end that the infrastructure bill got pushed back again. They say they are closer than ever to passing two transformative pieces of legislation. That’s mostly true.

That’s mostly true, and it’s pretty important!

Let’s also note that something big happened because of the release of this framework. It made it official that major progressive priorities — such as paid leave, the billionaires’ tax, the Medicare expansion to dental and vision — will be jettisoned. Yet the Congressional Progressive Caucus overwhelmingly and strongly endorsed it, anyway.

That locks in the left’s willingness to accept those concessions while enthusiastically backing the package. As Politico Playbook correctly noted, Rep. Pramila Jayapal (D-Wash.) provided the key quote revealing this: “We wanted a $3.5 trillion package, but we understand the reality of the situation.”

And don’t overlook this: Putting out the framework was the hook for numerous progressive and environmental groups to put out statements hailing its transformative potential, which further shores up the left flank behind it.

The trouble here is that highly visible speed bumps and glitches — like Manchin and Sinema not yet endorsing the framework — get magnified in day-to-day coverage into the latest sign of doom. That’s because everyone is training microscopes on every detail to divine where things are going.

Indeed, when various factions and players make such feints to increase leverage or realize some other goal — such as not wanting to appear jammed to preserve the aura of independence — it might magnify the impression of messiness and chaos. But as Jonathan Bernstein points out, this is how the legislative process works: Legislating inherently involves reconciling a lot of complicated moving parts. That’s messy and chaotic.

Which is why, from the White House perspective, the fact that the progressive caucus and a range of liberal groups are rallying behind the package shows that we’re seeing big general movement in the right direction. The left is one of those big moving parts — and it moved pretty dramatically.

“Every corner of the Democratic Party is coalescing around a vision that would be transformative and overwhelmingly popular right now,” one White House official tells me. “And it’s within reach.”

In fact, all that movement should focus our attention on the fact that there’s really one big missing piece left: getting Manchin and Sinema publicly on board behind the framework.

To be clear, that is a very big missing piece. We still don’t know whether Sinema supports some of its various revenue raisers, such as the surtax on income over $10 million. We don’t know whether Manchin will support things like the expanded child tax credit in its current form. The Senate is currently debating text and may allow changes to such things.

But regardless, here’s how all this would now have to unfold. Sinema and Manchin would have to indicate their support for the framework in a persuasive enough public way to get progressives in the House to pass the two bills. After that, the Senate could pass the reconciliation one.

Another way this might work out is via private talks among Manchin and Sinema on one hand, and House progressives on the other. If a solid enough understanding is reached, that could allow the House to pass both bills, and Senate action might follow.

All this might still collapse. Manchin and Sinema might pull the plug on the reconciliation framework. Or progressives might insist that the Senate go first on the reconciliation bill, and Manchin and Sinema might balk at that. Or lingering disagreements among House Democrats over things like prescription drug pricing and state and local tax deductions could upend matters.

But the key point here is that the final missing piece is within view: Getting Manchin and Sinema to yes on a concrete framework that the rest of the party has endorsed. We were not at this point 24 hours ago.

So if you squint, you can see a path to success. And it’s not crazy for the White House to think that in the end, this just might all work out.

#### They’ve privately committed – prefer insiders – BUT PC’s key to public – which is key to passage in the House

Mascaro 10-29 (Lisa Mascaro, and Farnoush Amiri, Associated Press, “Big, messy, complicated: Biden's plan churns in Congress,” Star Tribune, 10-29-2021, https://www.startribune.com/big-messy-complicated-bidens-plan-churns-in-congress/600111020/?refresh=true)

It's big. It's messy. And it's very politically complicated. That's President Joe Biden's sweeping domestic policy package as Democratic leaders in Congress try to muscle it into law.

Fallout was brutal Friday after Biden's announcement of a $1.75 trillion framework, chiseled back from an initial $3.5 trillion plan, still failed to produce ironclad support from two key holdout senators — West Virginia's Joe Manchin and Arizonan Kyrsten Sinema. On Capitol Hill, Congress adjourned the night before with fingers pointed, tempers hot and so much at stake for the president and his party.

Yet a formal nod of endorsement of Biden's plan from the party's Congressional Progressive Caucus late Thursday moved the president one step closer to the support needed for passage in the House. Determined to wrap it up, the House will try next week to pass Biden's big bill, along with a companion $1 trillion bipartisan infrastructure package.

"It's only 90% done," said Rep. Joyce Beatty, D-Ohio, the chair of the Congressional Black Caucus. "So you got to get through the complicated — the last 10%, as you know, is always the most difficult."

The fast-moving — then slow-crawling — state-of-play in Congress puts the president and his party at significant political risk.

Biden's slipping approval rating and the party's own hold on Congress are at stake with the 2022 midterm election campaigns soon underway. Democrats are struggling in governor's races next week in Virginia and New Jersey, where safe victories might have been expected.

"It's sort of stunning to me that we're in this place," exasperated Stephanie Murphy, D-Fla., told reporters late Thursday as the House adjourned.

Biden arrived that morning on Capitol Hill triumphant in announcing a historic framework on the bill that he claimed would get 50 votes in the Senate. But the two Democratic Senate holdouts Manchin and Sinema responded — maybe, maybe not.

Manchin and Sinema's reluctance to fully embrace Biden's plan set off a domino series of events that sent Biden to overseas summits empty handed and left the party portrayed as in disarray.

House Speaker Nancy Pelosi was forced to abandon plans to pass the related measure, the $1 trillion bipartisan infrastructure plan, that has become tangled in the deliberations. Progressives have been refusing to vote for that public works package of roads, bridges and broadband, withholding their support as leverage for assurances that Manchin and Sinema are on board with Biden's big bill.

"Everyone is very clear that the biggest problem we have here is Manchin and Sinema," Rep. Ruben Gallego of Arizona told reporters. "We don't trust them. We need to hear from them that they're actually in agreement with the president's framework."

Still, step by step, Pelosi and Senate Majority Leader Chuck Schumer are edging their caucuses closer to resolving their differences over what would be the most ambitious federal investments in social services in generations and some $555 billion in climate change strategies.

"We will vote both bills through," said Rep. Pramila Jayapal, D-Wash., the chairwoman of the progressive caucus, after endorsing Biden's plan.

Lawmakers are expected to spend the weekend negotiating final details on text that's swelling beyond 1,600 pages. Some are trying to restore a paid family leave program or lower prescription drug costs that fell out of Biden's framework.

Manchin and Sinema, the two holdouts, now hold enormous power, essentially deciding whether Biden will be able to deliver on the Democrats' major campaign promises.

Both have privately indicated that they are on board, according to Democratic Sen. Chris Coons of Delaware, a Biden ally.

"I have new optimism," tweeted Sen. Brian Schatz, D-Hawaii, who was part of a small entourage that met privately with Sinema at the Capitol.

"Same," responded Rep. Joe Neguse, D-Colo., who served as a bridge between progressives and the Arizona senator.

But it won't be easy, if past congressional battles are any measure. Legislating is work that takes time and rarely happens on schedule.

### AT: Stanage

#### Sufficient progressive support – House vote only failed because they’re waiting on Manchin and Sinema to publicly commit

Allen 10-29 (Jonathan Allen, NBC News, “Biden's future — and his party's — depends on whether Democrats can unify,” 10-29-2021, <https://www.nbcnews.com/politics/white-house/biden-s-future-his-party-s-depends-whether-democrats-can-n1282738>)

"The best way to secure the gains and the promises made today is to take a bit more time to see the actual bill and to make sure Manchin and Sinema say 'yes,'" Adam Green, co-founder of the Progressive Change Campaign Committee, said of the framework deal Biden announced.

In other words, progressives plan to hold out until the ink is dry on a plan that Biden negotiated with Manchin and Sinema. While they did not commit to vote for anything, members of the Congressional Progressive Caucus said in a statement Thursday that they are "overwhelmingly" supportive of the framework.

Still, a faction of them told Pelosi on Thursday that they wouldn't vote for infrastructure until there is a hard deal with the Senate to pass the social spending bill, according to one of the recalcitrant lawmakers. Estimates of the rebel group range from about two dozen to more than three dozen. That forced Pelosi to abandon hopes of a vote on infrastructure this week.

It should not have been a surprise to anyone, least of all Biden and Democratic leaders in Congress, that the two centrists would dictate the terms of any agreement. Each of them holds an effective veto on the Build Back Better plan because the Senate is split 50-50 and Republicans have not engaged in, or been invited to engage in, negotiations. All of them will vote against it.

### AT: Compartmentalized

#### Compartmentalization wrong – prefer ev specific to Biden and antitrust.

* 2A’s love “no spillover” – but this ev expressly says pushing antitrust cannot exist in a vacuum relative to other priorities.
* Makes a budget link – which applies bc Affs include perceived spending.

Foer ‘21

Bert Foer – Former Assistant Director and Acting Deputy Director of the Federal Trade Commission’s Bureau of Competition. Senior Fellow, American Antitrust Institute (AAI), Washington, DC. Foer is a graduate of the University of Chicago Law School, where he was an associate law review editor. He also earned an A.B. (magna cum laude) from Brandeis University and an M.A. in political science from Washington University. – “COMPETITION POLICY UNDER THE NEW ADMINISTRATION” – 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#dunlop

3. Antitrust does not float in a vacuum. The Biden administration’s antitrust policies must somehow be fitted into the larger picture of the massive challenges this administration will be facing: first, ending the pandemic; second, reopening and rebuilding the economy after a year of on-again, off-again close-downs; third, entering into a more diplomatic international mode; fourth, addressing the magnified problems of poverty, welfare, racial injustice, immigration, health care, education, and physical and environmental infrastructure; and maybe fifth, figuring out how to handle such competition policy issues as industrial concentration, high-tech platforms, the loss of small and medium-sized businesses, privacy and data security, labor in an evolving sharing sector, and more.

4. Other observers may order their list of the administration’s priorities differently, but it appears to me that the problems of antitrust will largely be problems of a more encompassing competition policy nature involving multiple decision makers, and they will necessarily be relatively low on the administration’s overall agenda, no matter which party controls the Senate. Moreover, at a time when so much will have to be spent on rebuilding the economy, budgets for each component of competition policy may be tight. I am not a deficit hawk, but we are probably going to have to give more attention to efficiencies in the overall governance of competition policy.

#### Staying on track is sufficient – only the plan makes it looks like imminent unity has been derailed

Desiderio 10-29 (Andrew Desiderio, congressional reporter for POLITICO, previously worked at The Daily Beast, BBC News and RealClearPolitics, graduate of The George Washington University’s School of Media and Public Affairs; and Anthony Adragna, energy reporter and author of Morning Energy at POLITICO, formerly covered EPA and environmental issues with Bloomberg BNA, graduate of Middlebury College in Vermont; “Biden heads to global climate summit with agenda still half-baked,” Politico, 10-28-2021, <https://www.politico.com/news/2021/10/28/climate-summit-agenda-half-baked-biden-517462>)

President Joe Biden departed Washington, D.C. on Thursday for the most consequential climate summit since the signing of the Paris accord in 2015, with significant barriers to his signature climate package still standing.

The president will land in Glasgow, Scotland without having signed a signature climate package into law and congressional Democrats still sputtering on the broader social-spending bill. There’s confidence — though not unanimity — among Democrats that he’ll arrive with sufficient detail to galvanize the rest of the world toward higher climate ambitions, though the party had hoped to send him overseas with something more concrete.

“We’ve never been more serious about passing climate legislation,” said Sen. Chris Murphy (D-Conn.), a Foreign Relations Committee member and a top Biden ally. “This is real. This is different than years past. I know the trust gap exists, but I think we’re gonna answer the bell.”

Democratic leaders released a framework on the spending package on Thursday morning — one they hope satisfies both progressives and centrists, particularly Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.). And the climate portion is poised to be the largest of the bill.

But Democrats are still far from unified on a range of significant hang-ups, from the revenue side to the policy details themselves. They wanted Biden to arrive in Glasgow for the COP26 summit on climate change with deliverables in hand on what the White House views as a national-security priority.

“I think we need to give him a good hand to play. I don’t think that means a law has to be enacted,” said Sen. Brian Schatz (D-Hawaii), the Senate’s most vocal climate hawk. “That’s not the standard.”

Without that, Democrats say, a detailed framework and a commitment from all Democrats on Capitol Hill would suffice. But it’s unclear if party leaders could even achieve that — jeopardizing Biden’s stated goal of marking a clean break from the Donald Trump presidency, which saw the U.S. almost entirely disengage on climate issues globally.

“It’s obvious that he would be strengthened to go to COP26 with something in hand,” Senate Foreign Relations Chair Bob Menendez (D-N.J.) said. “And the best way to lead is by example. And that example is best exemplified by saying we have a commitment to do this, and we will do it and we have the support of Congress to do it.”

Biden’s national security adviser, Jake Sullivan, who will be accompanying the president on his three-day trip to Rome for the G20 Summit and two days in Glasgow for COP26, pushed back on the idea that Biden’s credibility will take a hit if he shows up without having a deal in place on Capitol Hill.

“I think you’ve got a sophisticated set of world leaders who understand politics in their own country, and understand American democracy, and recognize that working through a complex, far-reaching negotiation on some of the largest investments in modern memory in the United States — that that takes time,” Sullivan said on Tuesday.

“And so I don’t think that world leaders will look at this as a binary issue — ‘Is it done? Is it not done?’ They’ll say, 'Is President Biden on track to deliver on what he said he’s going to deliver?' And we believe, one way or the other, he will be on track to do that.”

Democrats are eyeing an investment of $555 billion in climate change programs. Remaining points of negotiation include how to reinvest $150 billion toward a clean electricity program scuttled by Manchin, as well as whether to assess a fee on methane emissions, a potent greenhouse gas.

“That’s a lovely top-line number,” Rep. Jared Huffman (D-Calif.), a progressive climate advocate, quipped. “But the details really matter, including where the balance of some of that is being spent.” At the same time, he added, “we all want the president to have as much stature and credibility as possible on the world stage.”

Sen. Sheldon Whitehouse (D-R.I.), a top climate hawk, said success or failure for Biden will depend on the net reduction in emissions that the package could achieve.

“Alone, it does not do much,” Whitehouse said of the price tag for the climate portions of the bill.

Whitehouse and other climate hawks say they’re flexible about the policies deployed, as long as they cumulatively limit emissions at levels to keep global temperature increases below 2 degrees Celsius.

“It’s less about the number and it's more about what it funds,” added Sen. Martin Heinrich (D-N.M.), who serves on the Energy and Intelligence committees. “You can make $500-600 [billion] add up to the goals that [Biden] has articulated consistently. So long as we have the right investments, he’ll be able to go make a very credible case at Glasgow that we’re back and we’re leading.”

Biden’s Democratic allies said it was important for the party to have a united front on combating climate change as the president prepares for the COP26 summit. That would help Biden make the case that while the U.S. hasn’t yet crossed the finish line, there’s sufficient support on Capitol Hill to get it done.

“It’d be much better to have a deal in place before he leaves, but I think the writing’s on the wall that we’re very close to passing the most significant piece of legislation in the history of the country,” added Murphy.

#### BUT, keeping focus on infrastructure in the next few days is key to foreign perceptions

Markey 10-29 (U.S. Senator Ed Markey serves as chair of the Senate Climate Task Force, and on the Environment and Public Works Committee, the Commerce, Science and Transportation Committee, the Small Business Committee and the Foreign Relations Committee, “Ed Markey: Congress must send Biden to COP26 with a deal on climate,” Cognoscienti, 10-29-2021, https://www.wbur.org/cognoscenti/2021/10/29/joe-biden-build-back-better-555-billion-climate-clean-energy-cop26-senator-ed-markey)

Ahead of the conference, the president announced a new framework for the Build Back Better deal that would invest a historic $555 billion in climate action and clean energy projects. An agreement is within arms’ reach, but more work still must be done in Congress to hammer out the details of the legislation before the president arrives at COP26.

If the president is to have enough leverage to not only reestablish the United States’ position as a world leader in combating our climate crisis, but also bring other countries along in establishing stronger emissions goals, the U.S. Congress must keep working over the next few days to come to a deal on a bold, climate-focused reconciliation package.

The United States is responsible for 40% of excess carbon dioxide in the atmosphere — with our outsize historic responsibility for the climate crisis, we have an outsize responsibility to solve it.

#### As long as it still seems on track, foreign leaders will continue to believe a win is imminent – perceived as delivering

Feinberg 10-29 (Andrew Feinberg, journalist covering the White House and Capitol Hill at The Independent, “Biden is headed to Europe for COP26, having narrowly avoided embarrassment,” 10-29-2021, https://www.independent.co.uk/voices/biden-cop26-glasgow-build-back-better-act-b1947346.html)

When President Joe Biden flew on Air Force One to Cornwall four months ago, it was less than half a year since he had been sworn in. He arrived on his first trip abroad as president riding a wave of goodwill from America’s European allies who were weary of the bluster, bombast, and affinity for dictators that characterized Trump’s time in office. The message he went there to deliver was simple: America was back.

Now, nearly a year into his term, Biden is on his way back to Europe just hours after pressing Congress to enact his signature Build Back Better Act into law so he can arrive having fulfilled his promise that the US will take action to halt climate change in time for the COP26 conference in Glasgow.

The message this time? Democracy works.

If Biden cast his ultimately successful campaign against Donald Trump as a “battle for the soul of America” in which voters would choose “hope over fear, facts over fiction” and “truth over lies” by electing him as the nation’s 46th president, he has just as much made his term a referendum on democracy versus autocracy. Often choosing to frame this choice explicitly in his remarks, Biden has bet that Americans — and the world — will see his success as proof that the liberal order, characterized by free and fair elections to choose governments that respect basic human rights, is not too slow-moving and cumbersome for the increasingly polarized world of the 21st century.

With Thursday’s announcement that a deal has been reached to pass his Build Back Better plan through Congress, Biden will arrive in Rome on Friday with some — but not all — his ducks in a row.

The deal reached between House and Senate moderate and progressive Democrats does not please everyone. It doesn’t include the paid parental leave provisions he had made a centerpiece of his agenda. And it still has to pass both the House and Senate, via slim majorities that empower individual members to a degree not normally seen.

But the White House doesn’t see the “framework” unveiled on Thursday as half a loaf. They see Biden arriving in Europe having kept his promises and getting things done.

“The President is coming into the G20 and COP26 with strength,” Principal Deputy Press Secretary Karine Jean-Pierre said while speaking to reporters on Air Force One en route to Rome. “He’s been a leader since he stepped into the White House from day one, and he’s going to continue.”

Asked whether a failure by House and Senate leaders to move the package before Biden reaches Glasgow would be an embarrassment, Jean-Pierre echoed what House Speaker Nancy Pelosi had said about the bill not long before, calling it “transformational”.

As of when this column was being typed, the House Rules Committee was considering debate rules for what is now officially the Build Back Better Act — the last step before the House can approve the bill. In the Senate, it will require a long and often-weaponized amendment process called a “vote-a-rama” to pass, which Republicans will use to force Democrats to take politically toxic and embarrassing votes, sometimes until the wee hours of the morning. So it’s not likely that Biden will have anything ready for his signature by the time he reaches Scotland on Sunday.

But will world leaders see the failure to meet the COP26 deadline as a failure of democracy?

According to White House National Security Adviser Jake Sullivan, probably not. Speaking to reporters on Tuesday, Sullivan said Biden would be meeting with “a sophisticated set of world leaders who understand politics in their own country and understand American democracy and recognize that working through a complex, far-reaching negotiation on some of the largest investments in modern memory”. Sullivan added that he believed Biden would be “on track” to deliver on his commitments when he arrived in Glasgow.

So far, it looks like a promise made and kept.

### AT: Link/congress proposed

#### Plan get shutdown by Big Tech---they can lobby, manipulate political messaging, and threaten to leave the U.S.

Bone 20 (Jeff Bone, Assistant Professor of Legal Studies, Haub School of Business, Saint Joseph's University; “Antitrust Reform: Implications of Prospective Threats by Digital Platforms to Relocate Abroad;” 11-19-20, Belmont Law Review, Vol. 8, <https://ssrn.com/abstract=3574303>, TM)

To curb the excessive power of the major digital platforms such as Facebook, Amazon, Apple, and Google, some commentators have called for a series of legislative reforms in the U.S. These reforms include changes to antitrust policy as well as the establishment of a specialized antitrust court.7

Perhaps the most ambitious proposal is a call for a sectoral regulator to govern the conduct of digital platforms. The scope of this regulator would be comprehensive and include issues outside of an antitrust purview, such as privacy, media, data-use restrictions, and consumer protection.8 Such proposed reforms are likely to be met with resistance by the major digital platforms. What is less clear is the reactions and responses of politicians; in particular, the responses of those in Congress who have the power to enact these reforms into law. In order to become law, these regulations must go through Congress, which is a politically charged environment that is subject to pressure from the very companies who stand to lose their market power if subject to increased antitrust oversight.9 It has been suggested that some corporations such as Facebook, Apple, Amazon, and Google, are uniquely set apart from other multinational enterprises in that they are multifaceted, political agents capable of preventing further government oversight.10 These advantages are varied in nature. First, these companies are well financed and positioned in order to lobby politicians and regulators.11 Second, in some cases these corporations’ role as media outlets allows them to claim First Amendment protections which can potentially hinder certain regulatory changes.12 For instance, these digital platforms increasingly control the means through which politicians reach their constituents.13 Third, their connectivity allows them to directly engage users in challenging political initiatives that disadvantage them.14 Fourth, their growing importance as leading exporters allows them to raise “national champion” arguments asserting that the corporations interests should be protected and unhindered by U.S. regulation.15

Part I of this paper outlines the various regulatory concerns that are posed by the market dominance of the major digital platforms. These concerns include antitrust issues, as well as other salient challenges presented by digital platforms. These challenges include the protection of customer privacy, pervasive control over the distribution of media, and as a corollary, the ability to effectively coordinate political messaging and outlets. It is argued that if Congress proceeds to introduce fresh legislation to deal with these concerns, then it is possible that companies such as Facebook, Amazon, Apple, and Google will threaten an expatriation of some or all of their U.S. business operations. In the face of these threats, it is likely that Congress will cede to the demands of these companies.

### AT: Other senators push

### AT: Thumper – T/L

#### NO thumpers – they’re all explicitly priced in to our uniqueness ev, he’s got enough now, AND won’t spend PC on anything else – only plan’s fiat disrupts his careful prioritization

Lemire et al 10-18 (Jonathan Lemire and Zeke Miller, Associated Press, “President Biden faces critical next 2 weeks for agenda,” NBC Wesh 2, 10-18-2021, wesh.com/article/biden-faces-critical-weeks-for-agenda/37984609)

President Joe Biden is entering a crucial two weeks for his ambitious agenda, racing to conclude contentious congressional negotiations ahead of both domestic deadlines and a chance to showcase his administration’s accomplishments on a global stage.

Biden and his fellow Democrats are struggling to bridge intraparty divides by month’s end to pass a bipartisan infrastructure bill and a larger social services package. The president hopes to nail down both before Air Force One lifts off for Europe on Oct. 28 for a pair of world leader summits, including the most ambitious climate change meeting in years.

But that goal has been jeopardized by fractures among Democrats, imperiling the fate of promised sweeping new efforts to grapple with climate change. There's also rising anxiety within the party about a bellwether gubernatorial contest in Virginia and looming Senate fights over the federal debt limit and government funding that could distract from getting the president’s agenda across the finish line.

Biden is trying to stabilize his presidency after a difficult stretch marked by the tumultuous end of the Afghanistan war, a diplomatic spat with a longtime ally and a surge in COVID-19 cases that rattled the nation’s economic recovery and sent his poll numbers tumbling.

His team has continued its strategy — one that served it well during the campaign and earlier this year — of blocking out the outside noise to stay focused on a singular mission, this time to pass the two-part package that will give Democrats a platform on which to run in next year’s midterm elections.

“These bills, in my view, are literally about competitiveness versus complacency, about opportunity versus decay, and about leading the world or continuing to let the world move by us,” Biden said Friday while pushing the legislation in Connecticut.

Yet beneath the White House’s pleas for patience — reminding people that hard things take time — is a bubbling sense of urgency that a deal needs to be struck rapidly.

For the White House, there are the explicit target dates, including an end-of-month deadline on transportation funding and Biden’s upcoming foreign trip. But there are also more abstract imperatives: proving Democrats can deliver on their promises to voters and protecting Biden’s waning political capital.

With new urgency, the administration has sent signals to Capitol Hill in recent days that it is time to wrap up negotiations, that a deal needs to be reached, according to two White House officials who spoke on condition of anonymity because they were not authorized to publicly discuss private conversations. Biden himself has expressed impatience and will be increasing his own personal outreach this week to push lawmakers to find a compromise and bring the bills to a vote, the officials said.

West Wing officials are still optimistic that an agreement will ultimately be struck, but there are also fears that the messy, drawn-out negotiation has clouded the tangible benefits of what Biden aims to deliver to voters.

Biden sought to address some of that when he traveled to Hartford, Connecticut, last week to showcase initiatives to sharply reduce the cost of early childhood care — perhaps one of the only pieces of the legislation that is a lock to make the final package.

### AT: N/U – Water-Down / No CEPP

#### NOT responsive to our scenario – despite jettisoning the CEPP, it’ll contain sufficient climate spending for success at Glasgow

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.

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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.”

### AT: No PC – Not Pushing Details

#### Biden’s in the home stretch and pushing specifics now – focused on what he needs for Glasgow, AND will likely get it – despite NOT getting the CEPP

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>)

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