# NEG Doc v. Samford GT

# 1NC

## Off

### 1 – Plan Flaw

#### Plan flaw - they incorrectly reference US legal code by not including a reference in their shortened citation to the US. Vote negative to uphold standards of grammar. It is necessary for legally precise debates. Takes out solvency - would be misapplied

### 2 – DA – FTC Overstretch

#### Antitrust enforcement resources determine commitment to ongoing GAFA litigation – plan’s broadened agenda fatally overstretches

Kantrowitz 20 (Alex Kantrowitz, journalist covering Big Tech, Founder at Big Technology, independent newsletter and podcast, former Senior Technology Reporter at BuzzFeed, BA Industrial and Labor Relations, Cornell University, Special Student, Political Science and International Relations, Boğaziçi University, Istanbul; **internally citing former DOJ and FTC employees**; “‘It’s Ridiculous.’ Underfunded FTC and DOJ Can’t Keep Fighting the Tech Giants Like This,” Big Technology, 9-17-2020, - #E&F - https://bigtechnology.substack.com/p/its-ridiculous-underfunded-us-regulators)

“The agencies are severely resource-constrained,” Michael Kades, an-ex FTC trial lawyer who spent 11 years at the agency, told Big Technology.

The Federal Trade Commission and Department of Justice’s antitrust division have a combined annual budget below what Facebook makes in three days. The FTC runs on less than $350 million per year, the DOJ’s antitrust division on less than $200 million. Facebook made $18 billion last quarter alone.

The funding disparity between the tech giants and their regulators leads to an unbalanced fight, current and ex-staffers said: The agencies can’t investigate the tech giants to the extent they’d like. They might shy away from complex cases fearing a resource-draining battle. And when they investigate the tech giants, they often see former colleagues with intricate knowledge of their strategy and ability to act (or lack thereof) representing these companies. Without significant budget increases, the tech giants may well continue to act unrestrained with little fear of repercussions.

“DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology.

This doesn’t mean these agencies are entirely hamstrung; they can typically marshall the resources to bring a clear-cut case. “They want to win,” one ex-FTC official said. “If it's really egregious, and they find that in discovery, the attorneys are going to put a case together and go after it.” But when you can only take up a limited number of cases due to resource constraints, things inevitably slip through.

“When I was there, the privacy wing had maybe 50 people, and that's probably generous. That's lawyers, support staff, everyone,” Justin Brookman, the former policy director at the FTC’s office of technology research and investigation, told Big Technology. “If they were to bring a case, that would tie up half the resources of the group. And they had two litigations ongoing and that took up most of everyone's time.” The agency’s budget has barely increased since Brookman left in 2017, while the tech giants have added trillions of dollars to their market caps.

Inside the FTC and DOJ, employees are aware of the tech giants’ ability to fight, and the corporations’ budgets tend to live inside their heads. “Facebook will have the ability to raise every single issue, if they want to,” Kades said. “It doesn't have to be a winner, doesn't have to be close to winner. If they wanted to take this position in litigation, they can make every procedural maneuver difficult, they can not cooperate on discovery, they can fight on scheduling, they don't have to win even half of those, but it would just suck up resources.” The ability to do this, not even the action itself, can impact regulators’ thinking.

Agency staffers are typically mission-driven and knowingly work for salaries below private-sector rates, but the resource-rich tech giants are now poaching directly from agencies at a rate remarkable even for Washington’s revolving door between the private and public sector.

Kate Patchen, a DOJ antitrust chief, went directly to Facebook in 2018. Bryson Bachman, a high-ranking attorney in the DOJ's antitrust division, became a senior counsel at Amazon in 2018. Scott Fitzgerald, who worked in the DOJ’s antitrust division for nearly 13 years, became a corporate counsel working on regulation for Amazon this May. At the FTC, senior attorney Laura Berger moved to Microsoft in 2018 to become a privacy director for LinkedIn. And Nithan Sannappa, a well-regarded attorney in the agency’s division of privacy and identity protection left for Twitter in 2017 and is now a lawyer for Google.

The FTC declined to comment. The DOJ did not respond to an inquiry.

Hiring this type of talent gives the tech giants a major advantage in their effort to fend off regulation. Ashkan Soltani, a former chief technologist at the FTC, recalled agency lawyers hugging a former colleague who was working for the tech giants as an outside counsel as they prepared to face off in court. “They would have a really personal relationship with staff, which is kind of awkward,” he said. “And they'd know, in detail, all of the cases that the agency has currently and would be able to advise their clients whether to push hard on an issue or not.”

#### Winning GAFA breakups is key to transatlantic tech alliance

Muscolo et al 21 (Gabriella Muscolo, Commissioner, Italian Competition Authority, Rome, Fellow of the Centre of European Law of King's College London, lecturer of Company Law at the School of Specialization for Legal Professionals at the University of Rome – La Sapienza; and Alessandro Massolo, Economic advisor of Commissioner Gabriella Muscolo, Italian Competition Authority, Rome, teaching assistant at Luiss University of Rome, PhD Law and Economics, Luiss University, MA European Law and Economic Analysis, College of Europe; “WILL THE BIDEN PRESIDENCY FORGE A DIGITAL TRANSATLANTIC ALLIANCE ON ANTITRUST?“ Concurrences, #1, February 2021, - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#muscolo)

1. After the Trump era and in the midst of the Covid-19 pandemic, the Biden presidency will inherit a country that—as the recent riot on the US Capitol building harshly demonstrated—is politically divided, weakening and, most importantly and consequently, in danger of losing its global leadership to China.

2. Indeed, the international community expects the Biden administration to re-establish the USA’s political and economic global leadership, especially in international fora such as the World Health Organization or the Paris Climate Agreement, as it did after the Second World War.

3. The pillars of Biden’s foreign policy can be summed up by three Ds: Domestic, Deterrence and Democracy. [246] As to the first, in order to revive the US economy and catch up on high technology, Biden’s policy cannot deviate much from that of Trump’s “America First.” Thus, massive investment is also expected in infrastructure, innovation, technology and education.

4. At the same time, US foreign policy will be guided by the principle of deterrence which characterized the Cold War period. This policy will have to be adapted to the new context and, especially, to the strategies adopted by the United States’ main counterparts such as China, Russia, North Korea and Iran, which no longer rely on missiles but on the information and communication technologies (ICTs).

5. Finally, the deterrence principle will catalyse the third pillar. Democracy will in fact be the main criterion for choosing US partners in order to consolidate the West against the expansion of the East.

6. Within this context, the digital economy represents an extremely important battlefield for the US to regain world leadership. The USA is well placed when it comes to digital competition—indeed, almost all the prominent Western online platforms are American.

7. However, over the last decade, Google, Amazon, Facebook, Apple and Microsoft (hereinafter “GAFAM”) have come under severe antitrust and regulatory scrutiny, starting in the European Union and ending in the United States. A “break-up” sentiment is spreading on both sides of the Atlantic and this will certainly represent one of the main issues on Biden’s agenda. Indeed, GAFAM’s huge market power is perceived as a threat to Western democracies and has been accused of hampering competition and innovation. Both the USA and the EU know that it is fundamental to shape global standards in order to face security and privacy concerns posed by the rise of Eastern tech giants. [247] Moreover, there is a growing feeling that the growth of big tech, combined with non-democratic governments, could lead to “techno-authoritarianism.” [248]

8. Therefore, will there be a transatlantic unity when clamping down on online giants in the name of protecting and strengthening Western “techno-democracies?” A digital transatlantic alliance shall not be taken for granted.

9. Indeed, over the last decade, the EU has markedly shaped its own way of building a European data market and of facilitating the emergence of European tech companies.

10. The White Paper on Artificial Intelligence and the Communication on data strategy have made it clear that the EU has put its own digital infrastructure and assets in place, catching up with international competition in order to become one of the leaders in the digital realm. This aim is the result of a long stream of actions which started in the second half of the 1990s with the need to tackle more specific and disparate needs, such as guaranteeing that consumer data is processed fairly, lawfully and with a specific purpose [249]; providing legal protection to databases, such as copyright protection and sui generis rights. [250]

11. Furthermore, at the beginning of the new century, the European Union issued the e-Commerce Directive [251] with the aim of removing obstacles to cross-border online services in the EU. Indeed, since 2010, there has been a significant change of pac e; due to the evolution of the digital paradigm, the European Union started to adopt a more strategic view. In that year, the European Commission launched its Digital Agenda, which, among other things, gave birth to the creation of a Digital Single Market that aimed primarily to promote e-commerce within the EU.

12. In 2015, the EU made it clear that the EU Digital Single Market was a priority and released a new strategy aiming at improving access to digital goods and services, building an environment where online networks and services could prosper, exploiting it as a driver for growth.

13. A well-functioning and dynamic data economy requires the flow of data in the internal market to be enabled and protected. This is why the European Union issued the 2016 General Data Protection Regulation and developed the “European data economy strategy.” Through the latter, the European Commission proposed a series of policies and legislative initiatives to unlock the potential for re-use of different types of data and create a common European data space. In particular, it adopted the measures put forward in the European Commission’s 2018 communication Towards a common European data space, in which it proposed: (i) a review of the Directive on the re-use of public sector information (PSI Directive); (ii) an update of the 2012 Recommendation on access to and preservation of scientific information; (iii) guidance on sharing private sector data in B2B and B2G contexts. A new EU Regulation on the free flow of non-personal data was also adopted.

14. Moreover, in 2019, in order to foster the growth of the EU Digital Single Market, the European Union published another regulation in order to promote fairness and transparency for business users of online intermediation services. [252]

15. The long European legislative excursus described above concluded with the latest new regulatory package published by the European Commission at the end of 2020. The package included the Data Governance Act (DGA), [253] the Digital Services Act (DSA) [254] and the Digital Markets Act (DMA). [255] Regarding the former, the European Commission aims to provide a legal framework in order to unlock unused data, increase data accessibility and share data. The DSA builds on the e-Commerce Directive and provides a set of rules for digital service providers in order to guarantee transparency and accountability and advocates for effective obligations to tackle illegal content online. As for the DMA, it is the result of a decade of EU antitrust public enforcement and EU studies on the digital economy.

16. Indeed, the European Commission has launched several cases against online giants. Suffice it now to mention the Google saga (i.e., Google Shopping, Android and AdSense cases) and the ongoing Amazon ones. These lawsuits were all abuses of dominant positions characterized mainly by self-preferencing conducts. Despite the high sanctions imposed, the Google cases were criticized because of the lengthy and complex investigations and ineffective remedies imposed. [256]

17. This contributed to fuelling scepticism that competition law alone would not be sufficient to restore competition within digital markets. [257] As a matter of fact, the European Commission issued the DMA in order to restore contestability and fair play in EU digital markets .

18. In a nutshell, the DMA identifies a list of “core platform services” which are characterized, among other things, by extreme economies of scale, strong network and lock-in effects, almost zero marginal costs and lack of multi-homing. For instance, online search engines and social networking services can be considered core platform services.

19. The DMA defines “gatekeepers” as large online platforms which provide these kinds of services and other specific criteria. Due to their strong economic and/or intermediation position, which is entrenched and durable, gatekeepers must comply with a list of “dos” and “don’ts.” For instance, gatekeepers shall “allow third parties to inter-operate with the gatekeeper’s own services in certain specific situations” and “their business users to access the data that they generate in their use of the gatekeeper’s platform.” If the gatekeepers do not comply with these obligations, they may incur fines (up to 10% of the worldwide turnover) or periodic fines (up to 5% of the average daily turnover). In case of systematic infringement, additional remedies may be imposed. If necessary and as a last resort, non-financial penalties can be imposed, which may include behavioural and structural measures, e.g., the divestiture of (parts of) a business.

20. Thus, following these new regulations, it seems that GAFAM—who are, indeed, the main providers of core platform services in the EU digital markets—will most likely be under the European spotlight in the coming years.

21. Besides antitrust and regulations, the EU has also demonstrated its strong desire for digital independency by taking the decisive step of setting its own agenda for transatlantic cooperation, even before Biden has been sworn in. [258] Indeed, the agenda proposes a tech alliance to shape technologies, their use and their regulatory environment. In particular, on data governance, the European Union advocates cooperation “to promote regulatory convergence and facilitate free data flow with trust on the basis of high standards and safeguards.” [259] Furthermore, as for online platforms, the European Union suggests strengthening cooperation between competent authorities for antitrust enforcement in digital markets, particularly, by setting common views in market distortions. Therefore, the European Union seems to be putting itself forward as a “worldwide factory of digital rules.” [260]

22. However, this may not necessarily mean a strengthening of the digital industry in Europe. For instance, Europe’s financial system appears to be biased towards bank lending rather than equity capital, which should be more suitable for risky tech start-ups. [261

23. Moreover, the “Brussels’ effect” should not be taken for granted either. Indeed, even if the European Union confirms its new regulatory proposal, especially the DMA, GAFAM still earn 51% of their revenues in America versus 25% in Europe. Therefore, they may most likely prefer to run their European branches under local rules instead of adopting EU rules globally. [262]

24. On the other side of the Atlantic, the strategy against online behemoths seems narrower and backwards-looking. [263] Indeed, as we have introduced, in the USA we are witnessing a “Sherman Act momentum” [264] strongly advocated by the new Brandeis movement. [265]

25. During the Trump administration, GAFAM were scrutinized by American antitrust authorities. Indeed, the Department of Justice (DoJ) filed a civil antitrust lawsuit in the US District Court for the District of Columbia to prevent Google from unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the internet searches and search advertising markets and to remedy competitive harm. Furthermore, the Federal Trade Commission (FTC) has also filed a lawsuit against Facebook accusing it of engaging in a systematic strategy to eliminate threats to its monopoly. [266]

26. In both cases, reference is made to possible “break-ups.” In particular, in the DoJ’s case, the deputy attorney general made specific reference to historic antitrust cases such as Standard Oil (1911) and AT&T (1982), and in the FTC’s case, permanent injunctions are explicitly advanced which require, inter alia, the divestiture of Facebook’s assets, including Instagram and WhatsApp.

27. Most recently, the Texas attorney general filed a lawsuit, accusing Google of entering into an unlawful agreement that gave Facebook special privileges in exchange for promising not to support a competing ad system in the online advertising markets. [267]

#### Only way to avoid existential risks from hegemonic competition, democratic backsliding from BOTH techno-authoritarianism AND racial capitalism, failing multilateral coop, splinternet, and unregulated AI and quantum computing

Kop 21 (Mauritz Kop, Stanford Law School TTLF Fellow, Managing Partner at AIRecht, technology consultancy firm, studied intellectual property law, labor law, and contract law at Stanford Law School, Maastricht University and VU University Amsterdam, “Democratic Countries Should Form a Strategic Tech Alliance,” Stanford - Vienna Transatlantic Technology Law Forum, Transatlantic Antitrust and IPR Developments, Stanford University, Issue No.1, 2021, https://www-cdn.law.stanford.edu/wp-content/uploads/2021/04/Mauritz-Kop\_Democratic-Countries-Should-Form-a-Strategic-Tech-Alliance\_Stanford.pdf)

Just like we embed our own values in our hi-tech systems, the authoritarian regimes do the same. With authoritarianism I mean autocratic governments that have a culture with less political participation, less checks and balances and less civil liberties.15 Societies with social norms, democratic standards and ethical priorities that are incompatible with our own system.

Subsequently, the regimes export their undemocratic ideology to our society through the construction, dissemination and functionality of their technology. 16 Main contributors to this spread of culture and ideology through technology are the Belt & Road Initiative, Confucius Institutes and Chinese multinationals. 17 I am referring here to central 4IR technologies such as 5G infrastructures, AI, big data and quantum computing. 18 Excesses involve automated social profiling systems that monitor and hinder online dissidence. This process of exporting an incompatible political ideology through technology holds the danger of permanently weakening the health of our democracy, including the rights and freedoms we care so deeply about. We should prevent that from happening.

It is important to note that we do not intend to exclude the people who are living in authoritarian or even totalitarian regimes such as China, Russia, Iran and North Korea, nor the companies that are willing to abide to democratic technological standards. Instead, our strategy should be to avoid the ideas of the regimes that are incorporated in their technology, which is never neutral.

3. The Response

What needs to be done and who should do it?

Democratic Countries Should Form a Strategic Tech Alliance. That’s the first, foundational step. The US and its democratic allies should establish a strong, broadly scoped Strategic Tech Alliance with countries that share our digital DNA. An Alliance built on strategic autonomy, mutual economic interests and shared democratic & constitutional values. Main purpose of the Strategic Tech Alliance is to win the race / stay ahead of the competition.

Multilateral cooperation with any country that has matched concerns about the outcome of the race for AI & quantum dominance in view of democratic values, is paramount. A natural starting point for a geopolitical dialogue on disruptive technology that is also in the focus of President Biden, is Transatlantic cooperation.19 In addition to the US, EU, UK & Canada, countries such as India, Israel, Japan, South-Korea, Taiwan and Australia would be great candidates to join the cause. The Strategic Tech Alliance could also connect with existing structures such as NATO.

Moreover, it is crucial and urgent that democratic countries set worldwide technology standards together. This includes the development of globally accepted benchmarks and certification. Standards based on safety, security and interoperability, with respect for our common Humanist moral values.20 Values in which the rule of law and human dignity play a leading part.

Consequently, AI & quantum products and services made within the territory of the Strategic Tech Alliance or elsewhere in the world, should adhere to specific safety and security benchmarks, before they qualify for market authorization. These should follow the high technical, legal and ethical standards that reflect Responsible, Trustworthy AI & quantum technology core values. Ex ante certification comparable to the USA Compliance Marking or the European CE-marking should be mandatory before AI and quantum infused products and services are eligible to enter the Transatlantic markets.21

In this vision, the Strategic Tech Alliance should regulate transformative technology in a harmonized way across member countries. Using a risk-based approach that incentivises sustainable innovation. For example, the Strategic Tech Alliance would share core horizontal rules that govern the production and distribution of transformative tech systems. Think of universal, overarching guiding principles of Trustworthy and Responsible AI & quantum technology that are in line with the distinctive physical characteristics of quantum mechanics.22 Technology that gained the trust of the general public has significant marketing advantages.

To preserve pre-pandemic life as we knew it, we must bake our norms, standards, principles and values into the design of our advanced hi-tech-systems.23 From the first line of code. We can accomplish this by pursuing responsible, Trustworthy tech: by actually building socially & ethically aligned AI and quantum architectures and infrastructures. 24 We should incorporate our values en bloc and make our uniform design standards and (inter)operational requirements mandatory by law. A Strategic Tech Alliance could be the engine.

4. Political Feasibility

Let us discuss arguments against the formation of a democratic, value-based Strategic Tech Alliance that will set global technology standards. First, is establishing an Alliance that opposes the authoritarian tech agenda a realistic, politically feasible scenario or mere naive utopian thinking? Will the ambition of harmonized, global technology standards be limited by a cold shorter-term sum of costs and benefits? Will Realpolitik make it fade away in beauty?

Let’s start with the United States. After the Democrats recently recaptured Senate majority, progressive policies might regain momentum. But still, forming an Alliance and setting joint tech governance goals would require a bipartisan, bicameral effort. It would require large majorities to prevent legislative filibusters. Moreover, President Biden’s primary policy objectives are battling COVID-19 together with relief measures, Medicare for All, rebuilding the country’s infrastructure and fighting climate change. Regulating Big Tech and its impact on society might have less priority. However, winning the race for AI & quantum ascendancy should be high on any president’s agenda.25

Then the EU. In recent years, the European Commission has been very active and progressive in the field of legal-ethical frameworks for emerging tech, including the conception of responsible AI and data governance models. Since it has become clear that MAGA (Make America Great Again) will no longer be the leading ideology in America for the next 4 years, Ursula von der Leyen’s Team has not missed a single opportunity to strengthen transatlantic ties and inject political momentum into the relationship. With the main goal of implementing a mutual tech governance agenda, and jointly managing the geopolitics of exponential technology.

An exception to this rule was the recent EU-China deal, which raised quite a few eyebrows in Washington.26 This trade deal makes clear that economic interests of Western democratic countries in China, in this case prompted by commercial interests of the German car industry and the Silk Road Initiative, may stand in the way of the targeted team effort needed to achieve the envisaged Strategic Tech Alliance.27 As of 2020, the EU has surpassed the US as China's largest trading partner (numbers). The economic interests are gigantic and vary widely from one Member State to another.28 For example, the Netherlands, a country of 17 million people, has an annual trade deficit with China of no less than 70 billion euros. Therefore, one might think that the EU will be less likely to ‘turn away’ from China and choose sides.

It is to be hoped that Europe has not been lulled into blissful sleep by the Chinese Siren Song of smart partnerships, better working conditions, respect for intellectual property and fair trade & investment opportunities.29 The idea that the Chinese Party apparatus will allow more openness is a strategic misconception.30 The opposite of openness, reliability, honesty and a fair level playing field happens every day before our eyes in Hong Kong.31 And it doesn't get any better. Entirely in line with the autocratic paradigms of systematic repression, inequality, arbitrariness, state surveillance and control. 32 It is not expected that the political situation and civil liberties & human rights in China will change in the short or medium term. We are competing with a political ideology that is fundamentally at odds with our own system.33

In addition, internal divisions within the EU Member States may delay the rollout of progressive political initiatives.34 Facing the portrayed challenges, Europe should speak with one voice. Further, it is to be hoped that European ambitions towards strategic autonomy and data sovereignty will not stand in the way of transatlantic partnerships in the field of AI and quantum computing, quantum sensing and the quantum internet.

Second, is there sufficient political will, enough common ground between the various continents and countries to forge such an Alliance, comparable to the foundation of the United Nations in 1945 after World War II? There currently seem to be diverging opinions between the US and the EU on antitrust, digital tax and digital trade35, and consensus on IP policy, ethics, cybersecurity and the need for global value-based standards that respect democratic freedoms, human rights and the rule of law. On the other hand, it can be quite healthy to have mutual differences, and a varied pallet of perspectives within a partnership.

Moreover, who are we to pursue worldwide, culturally sensitive norms and standards? Could this be perceived by other countries as undesirable technologically expansionist behaviour? Will excessive standardization, certification and benchmarking have ramifications on rapid innovation, global competition and consumer welfare?

Brexit has made it painfully clear how difficult it is to agree on even the most trivial affairs. The question is whether the barriers to cooperation will be removed, just because a new wind is blowing from White House.36

In conclusion: political support to realize our ideal is a precondition for success. Preferably not in a weakened compromise form, but in a manner that reflects the power of the technology and the interests at stake. Instead of an isolationist MAGA approach, policy makers on both sides of the spectrum need to see the bigger picture and the urgency of the issues at hand. And reach out to nations that historically share our values and that demonstrably meet the democratic conditions set by the Alliance to qualify for membership.

With existential challenges ahead of us, normative choices must be made. We cannot get there with transactional politics and trade deals alone. We have to bring the best of both worlds together. A combination of normative choices - which are contextual, culturally sensitive and in constant flux - and Realpolitik is the key. Making the right choices today can result in the lasting partnerships we need to respond to the big questions we face. Partnerships based on mutual trust, strategic autonomy and shared sovereignty.37 Partnerships that acknowledge the need for regulatory cooperation and a values-based approach.

5. Are We Democratic Enough Ourselves?

Let's see if we can approach this matter from other, sociocritical perspectives.

First, are the Chinese the real threat, or is it us? Are we really democratic enough ourselves?38 Is making the distinction between the democratic and the authoritarian model the correct line of thinking, the proper approach for our proposed response to the identified challenges? Are technology and data capitalism coupled with the wrong kind of self-regulation causing filter bubbles, fake news and racial bias?39 In other words, could technology that originated from Western online platforms such as Facebook, Amazon, Google and Twitter be the real source of danger? Are the behemoth platforms, with market dominance and lobbying power greater than countries, menacing our democracy? In general, absent regulation, the tech platforms have corporate social responsibility and should adopt an Apollonian mindset towards responsible entrepreneurial ideology, world view and philosophy of life, instead of a Dionysian attitude. 40

One can argue whether the harmful societal influence of the social platforms was caused by naive idealism from Silicon Valley, or by unrealistic price and profit expectations of Wall Street.41 Or by a combination thereof. In this view, the algorithms42 have become less democratic not so much as a consequence of the wrong corporate ideology, but because of the increasing pressure that shareholders are putting on tech companies.43 Thus, the system is to blame.

But can you be a role model for the rest of the world this way? Are the dangers of our privatized technology governance model not as threatening, or even more dangerous to our society than the predictable authoritarian technology governance model could ever be? Is there an enemy within, that stands at the cradle of excesses like the Capitol Insurrection? 44 Is the privatized power over the digital world a similar existential challenge, for which solutions must be developed? The answer appears to be in the affirmative. Democratic countries themselves have serious internal problems.

Moreover, there is no empirical evidence that AI will endanger democracy and reinforce authoritarianism, totalitarianism or even fascism, since AI is ideologically neutral.45 That said, shouldn’t we better use machine values instead, since human values create biases in data and algorithms, fake news and conspiracy theories?46

Be that as it may, from a higher level, a strategic democratic alliance can provide a counterbalance to both the free-market capitalism based privatized digital governance model, and the authoritarian model. In the duel for AI dominance and the battle to be the first to build a functioning multi-purpose quantum computer, the West desperately needs the Tech Giants from the Silicon Valley and Massachusetts innovation clusters.

6. Two Dominant Tech Blocks

Currently, two dominant tech blocks exist: the US and China. The blocks have incompatible political systems. It is a battle between ideologies.47 Liberal democracy versus authoritarianism. Free market capitalism versus surveillance capitalism. Europe stands in the middle, championing a legal-ethical approach to tech governance. Its Member States often divided when it comes to Beijing: 12 of them participate in Xi Jinping’s Belt and Road program.

It is of crucial strategic importance to proactively consider potential alternative scenarios.48 Future scenarios in which our desired coalition of democratic countries did not materialize for whatever reason. We can use scenario planning for this. Scenario planning, or scenario analysis, is the development, comparison and anticipation of probable future scenarios, together with short- and longer-term transitions. 49 Impending scenarios meant to be used as thinking instruments.

Alternatives to the creation of a strong democratic Strategic Tech Alliance are no alliance or different alliances. Each scenario could bring both (trade) war and peace to the world. Please note that establishing a league of like-minded democratic countries does not guarantee winning the race for AI and quantum supremacy. Moreover, competition and rivalry between blocks could incentivize exponential innovation. The race for AI supremacy is not a zero-sum game.

Does one rule out the other? Could the US or the EU be both a partner and rival of China through smart partnerships? In theory, it is a position that both the US and the EU could take. In tandem with bolstering alliances with our allies, we should -to a certain extent- be open to dialogue and cooperation with the regimes. We also have to consider an unthinkable alliance of EU-China-Russia ‘against’ a pact between countries like US/Canada/UK/Israel/Australia/India/South-Korea/Japan.50

Another scenario is a protracted Cold War for AI Supremacy with no winner between the US and China.51 A no winner takes all scenario would eventually mark the Splinternet.52 On the one hand a China led internet, characterized by a top-down approach to tech. It would comprise of countries that adopt Chinese apps. Its rival would be a US influenced internet, including countries that adopt US built platforms and apps. From the server level, cloud computing and AI all the way down to the phone operating system level. Cyberbalkanization could result in two parallel worlds, each with distinct divisions regarding technology, trade and ideology. In practice, this implies two opposing ecosystems would exist, each using its own standards and architectures that are incompatible with one other.

In the event China wins the race for AI and quantum, it will have the power to overthrow the EU and the US.53 The world would see a new era of authoritarian surveillance capitalism. In the case that a strategic partnership of democratic countries led by the US and the EU will prevail, it may well coerce China to adopt Humanist values.

To prevent China Standards 2035, 54 we need a coalition of democratic countries that bakes its values into its technology and that sets worldwide interoperability standards for telecommunications, AI & quantum infrastructures.

7. Harms of Doing Nothing

The described advantages of the establishment of an alliance must be weighed against disadvantages, unintended consequences and the harms of doing nothing.

First, no alliance means fragmentation and division, without synergetic effects. A lack of action entails less chance of winning the race for tech dominance and securing the chance to set and control global standards. Standards that preserve democratic values. The danger of global autocratic values in technology and infrastructure increases in this analysis, because there is no en bloc counterbalance to emerging countries such as China, the country of the large numbers of consumers, hordes of AI talent, and huge amounts of machine learning training data, regurgitated by labelling farms. China has massive government budgets for the development of smart algorithms and quantum technology applications. Currently it’s everybody for himself; that won’t help us win the race. We need an alliance instead of division.

Second, quantum technology enhances AI. Together with blockchain it promises machine learning on steroids. Quantum and AI hybrids will give to the world a new perspective of science itself. In this context, it is crucial to raise awareness of their incredible potential for good, and their anthropogenic risks. The Fourth Industrial Revolution will bring about a world in which anything imaginable to improve, or worsen the human condition, can be built in reality.

Authoritarian countries obtaining this powerful technology and using it against us, poses serious national cybersecurity (cyberwarfare, hacking) threats.55 More importantly, the regimes would have the ability to impose their non-democratic values on us through technological expansionism. From our liberal-democratic viewpoint, this could lead to a dystopian scenario. AI driven facial recognition systems used for shadowing and social credit systems would become the standard. Surveillance machines are a dictator’s dream. Authoritarian a-moral machina sapiens will take over creation and invention. Privacy, mental security and freedom of thought will become a distant memory.

Our society will be better off when we forge Democratic Alliances. A united democratic tech block has a greater chance of winning the race for AI & quantum dominance.

Third, long term risks of underinvesting in 4IR technology are no less than existential. The US needs to invest heavily in safe & responsible AI and quantum. The market cannot pull this off on its own. The state should take the lead and launch a mission oriented, 2030 US Standards plan, backed by large-scale funding. 56 This plan should be sharply demarcated, and executed by golden triangle, public-private partnerships. These partnerships can be based on the triple helix innovation model, which guarantees synergistic effects between government, academia and business.

The portrayed advantages of bolstering an alliance, and actively shaping technology for good evidently outweigh the harms of remaining passive or indecisive. It is critical that the US does not hang back in a never-ending balancing of stakeholder concerns but that it is confident in formulating a vision and focussed in accomplishing its well defined national and global policy objectives. By doing nothing the US will fall behind economically. The US and the EU should set out the path along transatlantic lines and guide their democratic allies toward a Strategic Tech Alliance.57

### 3 – CP – Section 5

Next OFF is Section 5:

#### The FTC should issue clear enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes cross-border mergers and acquisitions.

#### The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

#### The Commission should write an opinion announcing a broad perspective of its Section 5 powers – but clarify that it has concluded that Intel’s conduct did not violate Section 5.

#### Federal and Appellate Courts will not grant cert to cases challenging the legitimacy of the FTC’s authority to make this determination.

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

Kahn ‘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.

#### Policy statements and data sets avoids politics and rollback.

* Assumes rollback efforts from either Political and Judicial actors.
* Empirical examples of FTC rollback go *Neg* – those episodes DID NOT include policy statements or data sets.

Kovacic ‘15

et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

Longevity for its own sake is hardly a worthy aim. There is little evident value in preserving a competition agency that ensures its survival by committing itself to unobtrusive law enforcement and declining to confront important and potentially controversial market failures. If a competition agency is to retain an economically significant enforcement role, one must ask how the agency is to perform that role without: (a) succumbing to pressure that undermines its capacity to make merits-based decisions about how to exercise its power to bring and resolve cases or use other instruments in its policy-making portfolio; and (b) losing the accountability and effectiveness that requires some connection to and engagement with the political process. What measures might enable a competition agency to resist suggestions that it undertake fundamentally flawed initiatives? How can one protect meritorious enforcement programs from political attack and intervention by political branches of government as such programs come to fruition? Presented below are some possible solutions.

A. Greater Specification of Authority

One approach is to avoid extremely open-ended grants of authority which application invites objections that the agency has overreached its mandate or inspires political demands that it use seemingly elastic powers to address all perceived economic problems. A fuller specification of powers and elaboration of factors to be considered in applying the agency’s mandate can supply a more confident basis for the authority’s exercise of power and a stronger means to resist arguments that it enjoys unbounded power.

B. More Transparency, Including Reliance on Policy Statements and Guidelines

Greater transparency in operations can increase the agency’s perceived legitimacy and supply a useful barrier to destructive political intervention. The foundations of a strong transparency regime include the compilation and presentation of complete data sets that document agency activity and matter-specific transparency devices, such as the preparation of statements that explain why the agency closed a specific investigation.

Competition agencies can usefully rely extensively upon policy statements and guidelines to communicate their enforcement intentions and delimit the intended application of their powers. One purpose of such statements is to suggest how the agency defines the bounds of the more open-ended and inevitably ambiguous grants of authority its enabling statutes. For example, the FTC’s policy statements in the early 1980s concerning consumer unfairness and deception were important steps towards defining how the agency intended to apply its generic consumer protection powers. By articulating the bases upon which it would challenge unfair or deceptive conduct, the Commission strengthened external perceptions (within the business community and within Congress) that it would exercise its powers within structured, principled boundaries, and it increased, as well, its credibility before courts. The FTC has never issued a policy statement concerning its authority to ban unfair methods of competition, and the failure to do so has impeded the effective application of this power.

A second important use of policy statements is to introduce plans for innovative enforcement programs. Before embarking upon a new series of initiatives, the competition agency would issue a policy statement that identifies conduct it intends to examine and, in stated circumstances, proscribe. Here, again, the FTC’s experience provides a useful illustration. Policy statements would be useful when the agency seeks to use section 5 of the FTC Act to reach beyond existing interpretations of the Sherman and Clayton Acts, or to apply conventional antitrust principles to classes of activity previously undisturbed by antitrust intervention. By issuing a policy statement before commencing lawsuits, the FTC would give affected parties an opportunity to comment upon the wisdom of the agency’s proposed course of action and to adjust their conduct. Such an approach would likely increase confidence within industry and within Congress that the Commission is acting fairly and responsibly, and it could well make courts more receptive to the FTC’s application of section 5 as well.

**4 – DA – FTC Independence**

***Next off is FTC independence:***

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

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

**Nam ‘18**

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

ABSTRACT:

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

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

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

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

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

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

INTRODUCTION

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

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

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

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

**Nam ‘18**

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

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

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

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

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

**Langan-Riekhof ‘21**

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

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

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

### 5 – DA – PTX

Debt Ceiling DA

#### Biden’s PC is key to swing 10 Reps to pass debt ceiling in the CR

Everett et al 9-16-21 (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.).

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

Carstensen ‘21

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

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

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

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

#### Collapses global finance

Hanlon 9-13-21 (Seth Hanlon, senior fellow for Economic Policy at the Center for American Progress, former special assistant to the president for economic policy at the White House National Economic Council, where he coordinated the Obama administration’s tax policy, JD Yale Law School, BA Harvard University, “Congressional Republicans Must Not Play Political Games With the Debt Limit,” Center for American Progress, 9-13-2021, https://www.americanprogress.org/issues/economy/news/2021/09/13/503720/congressional-republicans-must-not-play-political-games-debt-limit/)

Ten years ago, the Republican leaders of the U.S. House of Representatives risked an unthinkable economic catastrophe in a reckless attempt to gain leverage in budget negotiations. They threatened to block an increase in the U.S. debt limit—a routine and necessary step that enables the government to make ongoing payments required by law without defaulting. The crisis was averted, but the episode caused significant harm to the economy.

The debt limit needs to be raised again this fall, most likely in October. But in recent weeks, 106 Republican House members and 46 Republican senators, including Senate Minority Leader Mitch McConnell (R-KY), have said they will not vote for a debt limit increase. They claim that President Joe Biden and the congressional majority bear sole responsibility for taking the necessary action to avoid default. These members of Congress’ position is deeply hypocritical: As this column explains and Figure 1 helps illustrate, many of their own actions and policies have made the debt limit increase necessary. Their position is also terribly irresponsible because failing to raise the debt limit would cause catastrophic harm to the entire country.

Figure 1

[FIGURE 1 OMITTED]

Raising the debt limit is needed to preserve the full faith and credit of the United States

One of the bedrocks of the U.S. and world economy is the full faith and credit of the United States: the secure expectation that the U.S. government will pay its obligations in full and on time. The United States’ rock-solid credit allows financial markets to function and the country to pay low interest, or even negative real interest, to bondholders based on the certainty that they will be paid interest and principal on time. It also gives Americans, such as Social Security beneficiaries, veterans, military and federal civilian employees, beneficiaries of federal programs, and countless others, the security of knowing that they will receive the payments they rely on and are entitled to.

The United States has never defaulted on its obligations. The closest thing was a minor technical snafu in 1979 that was quickly fixed.

From time to time, Congress must raise the debt limit to prevent the country from defaulting. The debt limit is a 104-year-old provision that places a dollar cap on the total amount of outstanding debt that the Treasury Department can have to finance the government’s ongoing legal obligations. The debt limit is an unnecessary historical relic; almost no other comparable countries have one. The actual public debt is determined not by the debt limit but by the substantive spending and revenue laws that Congress passes.

In practice, the debt limit serves little function other than to potentially enable factions in Congress to force the United States to default on obligations it has already incurred—if they are reckless enough to do so.

The debt limit debacle of 2011 must not be repeated

Before 2011, parties in Congress never seriously threatened to force the United States into default to extract concessions. But then, the House Republicans’ reckless gambit brought the country to the brink of disaster. Even though the United States narrowly avoided default, the episode raised costs of borrowing for the government, private businesses, and homebuyers, and it slowed the already struggling economic recovery by undermining consumer and business confidence.

No good came out of the 2011 crisis. The resulting agreement produced an ill-conceived budget “sequester” that further slowed the economic recovery and resulted in chronic underfunding of key priorities.

Since 2011, every time the debt limit has needed to be raised, Congress has raised or suspended it without incident and on a bipartisan basis. Congress did so on a bipartisan basis seven times since that year: in 2013 (twice), 2014, 2015, 2017, 2018, and 2019.\* Then-President Barack Obama took the position after 2011 that he would never again negotiate over the debt limit. Similarly, the Trump administration repeatedly urged Congress to pass “clean” debt limit increases—that is, debt limit increases without conditions.

A majority of Senate Republicans, including then-Majority Leader McConnell, supported suspending the debt limit all three times it was needed under Trump.\* The most recent time, in 2019, McConnell explained:

[The debt limit suspension] ensures our federal government will not approach any kind of short-term debt crisis in the coming weeks or months. It secures our nation’s full-faith and credit and ensures that Congress will not throw this kind of unnecessary wrench into the gears of our job growth and thriving economy.

Raising the debt limit is just as imperative now as it was in 2019. The only difference in 2021 is that a Democrat sits in the White House.

A U.S. default would be catastrophic

When the United States reaches the debt limit, the Treasury Department cannot issue additional debt and therefore risks running out of cash. With the debt at the limit, the Treasury is now buying time through previously used accounting moves known as “extraordinary measures.” Unfortunately, those measures will probably only last into October, according to Treasury Secretary Janet Yellen. At that point, the government will not be able to meet its ongoing legal obligations. It would default. And while no one knows precisely what that could mean, the consequences could entail:

* Social Security checks stopping, putting the livelihoods of millions at risk
* The military and federal workers not receiving their paychecks
* Providers such as hospitals and doctors not being paid for services provided under Medicare and Medicaid
* People filing taxes on extension this fall not getting the refunds they are owed, and monthly child tax credit payments ceasing
* Countless families and businesses being thrown into turmoil as they are stiffed on many other kinds of payments
* Critical government services shutting down

In addition, a U.S. default would cause chaos in global financial markets. Treasury bonds set the benchmark for the risk-free interest rate—and if the government suddenly defaults on the payments on those bonds, the financial system would be fundamentally uprooted. The financial system could melt down even worse than it did in 2008, drying up credit and grinding commerce to a halt.

As Treasury Secretary Yellen told Congress in June:

Failing to increase the debt limit would have absolutely catastrophic economic consequences. It would be utterly unprecedented in American history for the United States government to default on its legal obligations. I believe it would precipitate a financial crisis. It would threaten the jobs and savings of Americans, and at a time when we are still recovering from the COVID pandemic.

Mark Zandi, chief economist at Moody’s Analytics, said: “It would be financial Armageddon. It’s complete craziness to even contemplate the idea of not paying our debt on time.” And JPMorgan Chase CEO Jamie Dimon said that a U.S. default “could cause an immediate, literally cascading catastrophe of unbelievable proportions and damage America for 100 years.” The American Enterprise Institute’s Michael Strain emphasized, “Even edging close to defaulting is dangerous,” and with as much as a temporary default, the “unthinkable might happen.”

#### Cascades to multiple intersecting existential risks – including nuclear wars, environmental destruction, and critical infrastructure – AND turns case – including implementation and enforcement capacity, alliances and authoritarianism

--VUCA = volatility, uncertainty, complexity, and ambiguity

--JIT = just in time

Maavak 21 (Mathew Maavak, consultant at Risk Foresight, specializing in Strategic Foresight, Contingency Planning, Perception/Crisis Management, Energy and Resource Geopolitics, Defense and Security Analysis, PhD policy studies, Universiti Teknologi Malaysia, MA International Communication, University of Leeds, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?” Salus Journal, 9(1), 2021, https://salusjournal.com/wp-content/uploads/2021/04/Maavak\_Salus\_Journal\_Volume\_9\_Number\_1\_2021\_pp\_2\_17.pdf)

According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid-2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity

[FIGURE 1 OMITTED]

Figure 1: Systemic Emergence of Global Risks

The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak.

The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020).

As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007).

Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit.

According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019):

“You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author).

President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period.

A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016).

In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade.

ENVIRONMENTAL

What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation:

The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs.

Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated.

Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity.

Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021).

Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications.

On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabria-based ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008).

The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section.

Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade.

GEOPOLITICAL

The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic.

Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction-adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

Geopolitics will still be dictated by major powers. However, how will the vast majority of nations fare during this VUCA decade? Many “emerging nations” have produced neither the intelligentsia nor industries required to be future-resilient. Raw materials and cheap labour cannot sustain anaemic societies in a volatile world. Advances in material sciences and robotic automation as well as technological “ephemeralization” (Fuller, 1938; Heylighen, 2002) may shift manufacturing back to the Developed World.

In an attempt to mask the looming redundancy of these nations, untold billions have been wasted on vanity studies, conferences and technological initiatives drawn up by an army of neoliberal experts and native proxies. Risks were rarely part of the planning calculus. National and regional blueprints ranging from Malaysia’s Vision 2020, Saudi Vision 2030, ASEAN 2025 to Africa 2030, amongst others, will fail just as their innumerable precursors did.

The author defines a redundant nation as one which persistently lacks a comprehensive brain bank and an adaptive governance structure in order to be future-resilient. Redundant nations are preludes to failed states. They will lack native ideations and coherent policies that are critically needed in a VUCA decade. While policies intended to “promote growth in developing countries” had traditionally acted “as agents for conflict prevention” (Humphreys, 2003), the trade-off was often bureaucratic overgrowth, corruption, ethnoreligious discrimination and resource wastages.

Attempts to re-use these nations as geopolitical proxies a la the Cold War may prove too costly for potential sponsors. The Fat Leonard scandal (Whitlock, 2016) in Southeast Asia – which entrapped senior US naval officers in a web of sleaze – may be a harbinger of similar breaches on friendly territory, particularly as China’s Belt and Road Initiative (BRI) challenges US geopolitical hegemony worldwide. The BRI however snakes through many potentially redundant nations and may expose China to a “death by a thousand cuts” via geo-economic extortion. Beijing’s recent attempts to portray itself as a humanitarian superpower has somewhat backfired after numerous defects were discovered in its “medical aid” exports (Kern, 2020).

Ultimately, one should not underestimate the possibility, however remote, of national boundaries being redrawn before the Great Reset period is over. The global map was different only 100 years back. The once-mighty Soviet Union no longer exists while its former nemesis, the United States, faces social clefts of ominous proportions. Alarming parallels are now being drawn between the inauguration of President Abraham Lincoln on March 4, 1861 – which led to the US civil war – and the swearing in of Joe Biden as 46th President of United States on Jan 20 2021 (Waxman, 2021). How will a weakened United States affect NATO and the larger Western-led global alliance?

SOCIETAL

The WEF (2017) had pencilled “global social instability” as the biggest threat facing our collective future. A similar outcome was gamed out in a 2007 study by the Development, Concepts and Doctrine Centre at the United Kingdom Ministry of Defence (DCDC, 2007).

According to Peter Turchin (2016), a professor of Evolutionary Biology at the University of Connecticut, the United States may experience “a period of heightened social and political instability during the 2020s” – marked by governmental dysfunction, societal gridlock and rampant political polarization. To blame this phenomenon on the presidency of Donald J. Trump is to wilfully ignore the gradual build-up of various fissiparous forces over decades.

The social media plays a force multiplier role here. While risks metastasize at the bedrock levels of society, policymakers are constantly distracted from the task of governance by a daily barrage of recriminations, fake news and social media agitprops. As a result, longterm policy imperatives are routinely sacrificed for immediate political gains. The importunate presidential impeachment sagas and electoral fraud accusations in the United States are reflective of wider social fissures, state fragilities and policy paralyses worldwide.

There is nothing new in this panem et circenses (bread and circuses) phenomenon. Juvenal had noted a similar trend during Rome’s imperial decline circa 100 A.D. Recently, despite clear signals that the world was facing an economic catastrophe, the United Nations seemed more focused on the discovery of gender bias in virtual assistant software like Siri and Alexa (UNESCO, 2019). How will this revelation benefit the bottom 99% of humanity in dire economic conditions; one where the victims will be preponderantly women and children?

Just like in Imperial Rome, bread and circuses are symptomatic of an economic system that relentlessly benefits the elite. The mountain is ignored and the molehill is prioritized through controlled public narratives. The issue of “stolen childhoods”, for example, is now couched in terms of climate change rather than on sexual exploitation. Few take note that nearly “100,000 children – girls and boys – are bought and sold for sex in the U.S. every year, with as many as 300,000 children in danger of being trafficked each year.” Child rape, as John Whitehead (2020) further notes, has become “Big Business in America.” Not surprisingly, human trafficking has emerged as a $150 billion global industry (Niethammer, 2020).

Such shocking human rights failures do not figure prominently in the calculus of various “social justice” movements. The Top 1% needs their “useful idiots” – a phrase misattributed to Lenin – to generate a constant supply of distractions. Activist-billionaire George Soros, for example, is pumping $1 billion into a global university network to “fight climate change” and “dictators” which curiously include elected leaders such as former US President Donald J. Trump and India’s Prime Minister Narendra Modi. These “academically excellent but politically endangered scholars” (Open Society, 2020), as Soros calls them, may turn out to be the very disruptors who will “undermine scientific progress” in the West – just as Turchin (2016) predicted in his seminal study. Soros’ pledge was coincidentally made when COVID19 began to decimate the global economy and healthcare systems. Elite philanthropy is now an avenue for global subversion. An assortment of scholars, government officials and NGOs are already channelling the agendas of their well-pocketed patrons, backed by Big Tech’s control of the mainstream and social media (Maavak, 2020c). Their narratives are reminiscent of giddy sophistries which fuelled a variety of communist and anarchist movements during the build-up to WWII.

Under these circumstances, some nations may eventually seal their borders and initiate authoritarian measures in order to maintain internal stability. This is no longer an unthinkable proposition as dissatisfaction with democracy has peaked worldwide (Foa et al, 2020). Measures perfected by COVID-19 lockdowns may have inadvertently served as a test run in this regard.

### 6 – CP – Advantage

The USFG should

* [Plank 1] cooperate on the Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities including exchanging information, increasing agency capacity through sharing training and best practices, collaborating on projects of mutual interest, providing assistance on investigations, sharing confidential information, coordinating investigations, facilitating witness interviews, and other cooperation as requested
* [Plank 2] cooperate with Five Eyes Countries on intelligence sharing and cooperation including Huawei’s 5G technology, Hong Kong’s national security law, the Indo-Pacific strategy, and Russian cybersecurity threats
* [Plank 3] eliminate the SAFE WEB Act sunset provisions to facilitate the FTC’s cross-border data transfers and bilateral information sharing, staff exchanges, and other types of reciprocal assistance with foreign enforcement authorities
* [Plank 4] increase resources for CIFIUS

#### Zero 1AC internal link is an enforcement key argument –

#### Plank 1 solves MMAC and FTC good internal link on competitiveness – coop alone solves

#### Plank 3 solves FTC –SAFE WEB Act solves in the squo – eliminating subsets is key

#### Plank 4 solves CFIUS internal link – no tradeoff with more resources

FYI. MSU = Blue.

Kapur and Shin ’20 (Anchal Kapur, Paul Shin, “The Five Eyes look to enhance antitrust sharing and co-operation”, <https://www.claytonutz.com/knowledge/2020/september/the-five-eyes-look-to-enhance-antitrust-sharing-and-co-operation>, September 17, 2020)

The agreement signals greater transparency in the sharing of information between competition agencies about companies doing business across borders. Competition agencies already co-operate in investigations and merger cases – but how they co-operate can vary and the lived experience in one matter can be different in the next. The newly signed co-operation agreement between the Five Eyes signals an intention on the part of competition agencies to co-operate more, and in a more transparent way, about companies in relation to cross-border antitrust investigations and merger control. As a step toward recording publicly existing co-operation practices, the principles outlined between the competition agencies signal an effort toward more transparent co-operation in a globalised economy. An understanding of the framework set by the agreement will be helpful in giving companies more certainty when making decisions in response to co-operation requests and understanding the implications of that co-operation. Overview The competition agencies of Australia (Australian Competition and Consumer Commission), the United States (Department of Justice/Federal Trade Commission), the United Kingdom (Competition and Markets Authority), Canada (Competition Bureau) and New Zealand (Commerce Commission) (Parties) have signed the Multilateral Mutual Assistance and Co-operation Framework for Competition Authorities (MMAC). The MMAC is a memorandum of understanding which provides a framework for co-operation as well as the entry into bilateral or multilateral arrangements between the Parties based on the Model Agreement at Annexure A to the MMAC. What this means for corporates and individuals doing business in Australia The MMAC signals increased and more seamless co-operation between the Parties on areas including antitrust investigations, merger control, areas of future enforcement and competition policy. As shown by the proposed acquisition of Fitbit by Google resulting in concurrent reviews by the ACCC, the European Commission and the US Department of Justice, companies should be aware that competition agencies around the world share information between each other, especially in connection with merger clearance or market studies, and perhaps to a lesser extent, cartel investigations, with a global reach. This means that companies must ensure adopting a careful balancing exercise between: responding to a local competition agency's requests for waivers as each agency will have idiosyncratic issues to consider or prioritise for its own domestic market; and ensuring broader consistency – for example in a joint cartel defence or merger clearance review – taking into account the fact that interactions with an agency in a particular jurisdiction in one way may affect investigations in another jurisdiction. An additional consequence of interagency co-operation and concurrent reviews is that agencies may hold off from publishing a decision or agreeing on a remedy until all agencies in each relevant jurisdiction have made a decision on that particular issue, further adding uncertainty to companies involved. What remains to be seen is how much co-operation between the Parties will reflect what is in the Model Agreement, or diverge from current practice. For example, while the MMAC notes that the Parties intend to deliver the maximum co-operation possible, it also acknowledges that the Parties may not be able to meet every element of the co-operation framework set out in the Model Agreement; and that the Parties may enter into bilateral or multilateral agreements to co-operate. Key provisions of the MMAC and the Model Agreement Information to be shared between Parties is defined in the MMAC as: Agency Confidential Information. Information that is in the possession of a Party that it is not prohibited from disclosing by law, but normally treats as non-public. Investigative Information. Information related to an investigation that is not in the public domain, which has been either compulsorily acquired by, or provided voluntarily to, a Party and that the Party is required to protect from disclosure. Some types of co-operation contemplated under the MMAC by the Parties include: exchanging information and experience on competition issues, policies, laws, and advocacy and outreach; increasing agency capacity and effectiveness by way of mutual sharing of training and best practices; collaborating on projects of mutual interest through working groups; and providing assistance and co-operation on investigations by: sharing confidential information subject to certain protections, limitations on use and privilege); coordinating investigations; facilitating voluntary witness interviews; and other co-operation as requested. As noted above, the Parties have also developed the Model Agreement in order to assist the Parties to enter into a more detailed agreement for reciprocal investigative assistance, either bilaterally or multilaterally. Examples of such investigative assistance contemplated by the Model Agreement include: disclosing, providing or discussing Investigative Information to the extent possible under each Party's laws; and obtaining Investigative Information at the request of a Party by: (i) facilitating witness interviews; (ii) obtaining Investigative Information; (iii) locating witnesses or things; and (iv) executing searches and seizures. The Model Agreement broadly provides that the requesting Party provides, in writing, a description of the assistance it seeks and to the extent necessary, any procedural or evidentiary requirements which need to be observed (for example, recording of witness statements, process for obtaining oaths, retention of privilege and confidentiality issues, records authentication, obligation of the requesting Party to retain Investigative Information). The Parties are to also generally discuss the procedures in executing the request and whether there are any legal requirements and processes for obtaining and handling any Investigative Information. There are also protections and protocols in place in the Model Agreement pertaining to the handling of information shared between the Parties under the Model Agreement. These include provisions relating to the following: Return or destruction of documents. Parties are to return or destroy all Investigative Information at the request of the Party which provided that Investigative Information, at the conclusion of a matter. Privileged communications. If information shared by a Party pursuant to a request for investigative assistance is later found to be privileged, then the Party which receives that privileged information is to not use it for the purposes of enforcement and use all appropriate procedures to limit the disclosure of such information in other contexts (unless it is determined after discussions with the Party which provided that information, that any such privilege has been waived or otherwise lost). Denying or postponing assistance. A Party responding to a request for investigative assistance may deny or postpone the assistance in whole or in part if, among other things, the request would: (i) exceed its reasonably available resources; (ii) be contrary to its law or other important interests; or (iii) the requesting Party is unable to give assurances with regard to confidentiality or the purposes for which the information will be used. Confidentiality. The Parties will, to the fullest extent possible and consistently with its laws, maintain confidentiality of any Investigative Information including the fact that a request for Investigative Information has been communicated or received. Limitation of use. Subject to certain exceptions, Investigative Information received by way of a request for assistance must only be used for the purposes enforcing competition laws (whether for the matter for which the information was sought, or for another competition enforcement matter). Building on existing practices The MMAC complements the other forms of mutual assistance already in place, for example: Treaties. Australia and the United States have treaties in place to exchange evidence and assist each other in relation to matters involving competition law enforcement activities. Memoranda. The memorandum of understanding recently entered into between the ACCC and the Australian Prudential Regulation Authority (APRA) the purpose of which is to promote a competitive, well-regulated and stable financial system in Australia by way of the two agencies coordinating, co-operating and sharing information on the back of a transparent and collaborative relationship. Also, the ACCC signed a memorandum of co-operation in 2019 with the United States' Federal Bureau of Investigation with a view to enhance the two agencies' capabilities in investigating criminal antitrust conduct by way of mutual training and exchange of information. Other frameworks. The Organisation for Economic Co-operation and Development, and the International Competition Network provides a forum for competition agencies to engage on policy and provide recommendations to one another about matters including international co-operation between competition agencies.

FYI. MSU = Blue

Reingold and Wallace ’21 (Barry Reingold (Barry Reingold has more than 25 years of experience as an antitrust litigator and counselor. His practice includes cases involving antitrust, mergers and acquisitions in courts and before the U.S. Department of Justice and the Federal Trade Commission. A former Assistant to the Director of the FTC's Bureau of Competition, he joined Perkins Coie in 1981), Cara Wallace (Cara Wallace assists clients with commercial disputes, involving business torts, intellectual property, unfair competition, the False Claims Act and commercial contracts. She has experience providing pre-litigation counseling, managing e-discovery, engaging in motions practice and developing trial strategy. Cara has represented clients in state and federal court, judicial hearings, private mediation and at trial), “FTC Report Recommends Increased Cross-Border Cooperation and Policy Leadership on Antitrust and Consumer Protection Issues”, <https://www.jdsupra.com/legalnews/ftc-report-recommends-increased-cross-4307298/>, March 1, 2021)

Last week, the Federal Trade Commission (FTC) approved its Commission Report on Hearings on Competition and Consumer Protection in the 21st Century. The report is based on testimony from the March 2019 “The FTC’s Role in a Changing World” hearings, which focused on the relative effectiveness of the agency’s cross-border enforcement strategies in a global economy characterized by rapidly developing new business practices and technologies. The report recommends increased FTC statutory authority for enhanced cross-border enforcement and FTC leadership on international antitrust and consumer protection issues. Under activist Biden administration leadership, the agency is likely to increase its cross-border enforcement effort. Increased Cross-Border Cooperation Central to the FTC’s cross-border consumer protection cases is the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Boarders Act (SAFE WEB Act), which provides the agency authority to challenge misleading practices that have a nexus to the United States or American consumers. The SAFE WEB Act provides the FTC with cross-border data transfer mechanisms and enhances the FTC’s ability to engage in bilateral information sharing, staff exchanges, and other types of reciprocal assistance with foreign enforcement authorities. Since 2006, the FTC has responded to 130 information-sharing requests from over 30 foreign enforcement agencies. The FTC’s powers under the SAFE WEB Act are set to expire pursuant to a sunset provision in September 2027. To enhance the FTC’s cross-border consumer protection efforts, the FTC’s Office of International Affairs recommends that the FTC solicit Congress to eliminate the SAFE WEB Act sunset provision. The Office also recommends enhanced FTC statutory authority to facilitate increased cross-border information and the sharing of investigative resources in the agency’s antitrust cases. Expanded Antitrust and Consumer Protection Policy Leadership The report also recommends that the FTC’s expertise should inform all U.S. government policies involving international antitrust and consumer protection issues. The FTC has provided leadership in the International Competition Network, a network of nearly all the world’s competition agencies, to increase understanding of competition policy and promote convergence toward sound antitrust enforcement, and other international policy organization and enforcement networks. The FTC’s involvement has resulted in, for example, the Guiding Principles on Procedural Fairness and Recommended Practices for Investigative Process and the Antitrust Guidelines for International Enforcement and Cooperation. The report advocates that the relationships the FTC has built with foreign agencies position it to help address emerging issues in a global economy such as privacy issues arising from new consumer-facing technologies. The Office of International Affairs recommends that the FTC expand its international leadership and use its experience to inform U.S. government policies involving international competition and consumer protection issues. Takeaways Whether the recommended statutory changes will come to fruition is uncertain. Nonetheless, the report should be regarded as a reminder that, especially under activist Biden administration leadership, the agency will continue to aggressively pursue cross-border enforcement matters.

FYI. MSU = Blue

Barrington ’19 (Jayden R. Barrington, University of San Diego School of Law; TRANSACTIONS: THE TENNESSEE JOURNAL OF BUSINESS LAW, B.B.A. 2017, University of San Diego, “CFIUS REFORM: FEAR AND FIRRMA, AN INEFFICIENT AND INSUFFICIENT EXPANSION OF FOREIGN DIRECT INVESTMENT OVERSIGHT”, <https://ir.law.utk.edu/cgi/viewcontent.cgi?article=1524&context=transactions>, 2019)

The hostile $117 billion corporate takeover of Qualcomm, a California semiconductor manufacturer and leader in 5G technology, by Broadcom came to an abnormally abrupt end in March of 2018.1 While mergers and acquisitions often break down in today’s business climate, it is abnormal for the President of the United States to block what would have been the largest tech merger to date.2 Though Broadcom publicly announced plans to redomicile in the United States, it was not enough to evade government scrutiny because its parent company, Avago, was based in Singapore.3 In November 2017, Qualcomm directors rejected Broadcom’s unsolicited $103 billion acquisition offer. 4 After months of highly public discussions between the two rival semiconductor firms, the acquisition turned hostile when Broadcom issued a tender offer to Qualcomm shareholders at a premium above the stock price in an attempt to acquire control of Qualcomm board seats.5 On March 4, 2017, just two days before the scheduled shareholder meeting to determine the outcome of the tender offer, the United States government interjected.6 The Committee on Foreign Investment in the United States (CFIUS) reviewed the proposed acquisition and halted the takeover attempt by releasing an order stating that it had identified national security risks that required a full investigation.7 On March 11, the CFIUS Committee concluded its investigation and recommended that the President of the United States reject the deal.8 President Trump acquiesced to the CFIUS Committee’s recommendation and blocked the takeover by Executive Order the following day.9 This marked the fifth transaction to be formally terminated through the abstruse CFIUS process that informally derails countless deals.10 Overnight, CFIUS made headlines in not only the local San Diego Tribune,11 but also the Wall Street Journal, the New York Times, the Washington Post, Forbes, FoxNews, CNN, and law firm newsletters to clients across the globe.12 Headlines like those following the Qualcomm-Broadcom breakdown will increase in regularity due to an expansion of the Legislature permitting executive intervention of foreign transactions. CFIUS is the interagency regulatory body that facilitates an executive review of foreign mergers and acquisitions involving a United States entity to stop or reverse deals with national security implications.13 When international transactions are planned or already completed without prior CFIUS approval, the CFIUS Committee investigates the potential impact on national security and recommends to the President of the United States either approval, implementation of mitigating measures, or full rejection of the deal.14 Historically, the large majority of foreign investment in the United States has been unregulated and the process of review itself has been underregulated. Recently, in August of 2018, Congress passed the Foreign Investment Risk Review Modernization Act (FIRRMA) which exponentially expands the scope of CFIUS jurisdiction and the CFIUS review process.15 The President signed this legislative overhaul into law and FIRRMA now awaits full implementation.16 CFIUS expansion will negatively impact economic sectors, both domestic and international, if not adequately regulated. Additionally, FIRRMA does not do enough to protect the United States in today’s global economy. FIRRMA overextends CFIUS and will likely hinder necessary investment that funds necessary innovation. Further, FIRRMA falls short by not addressing threats from both start-up technology transfer by hiring American minds and cumulative passive foreign ownership. FIRRMA’s failures to adequately address these issues are important because CFIUS serves a critical role in managing international economic tension and preserving national security, a balancing act that is now more critical than ever in the age of cyberwarfare, economic dependence, global citizenship, and artificial intelligence. This Comment advocates for a more holistic approach to ensure national security interests are preserved while the United States remains open to receiving any potential benefit from inbound foreign direct investment. Part I of this Comment provides background on inbound foreign direct investment, the history of CFIUS, the old review process under the previous legislative framework, and the newly enacted changes to CFIUS review under FIRRMA. Part II analyzes the increased scope of CFIUS jurisdiction and argues that the new regime is insufficient to achieve the needed balance between the interdependent economic and national security consideration. Some changes are inefficient due to overbreadth; other changes fail to successfully capture posed threats to national security that ought to be addressed by CFIUS. Finally, in Part III, this Comment poses a solution to the issues discussed in Part II. To reduce underregulated exposures of national security interests and free the market from an inefficiently designed regulation structure, Part III recommends amendments to FIRRMA, additions to the Securities and Exchange Commission (SEC) regulation, and specific federal regulations FIRRMA allows the Committee to implement. I. Background This background section lays the foundation for later analysis by defining and connecting the key concepts of inbound foreign direct investment and national security, the origin of CFIUS, the regime as it functioned under the Foreign Investment and National Securities Act of 2007 (FINSA) prior to 2018,17 and the key changes that accompany the new CFIUS regime under FIRRMA. First, it will discuss foreign direct investment, the definition of FDI, its impact on the economy, and the relation between this source of funding and national security. Second, it will address the history of CFIUS, its origin, and path to codification. Third, it examines the FINSA period as reflected by triggering transaction guidelines, its review process, and the Fifth Amendment challenge in Ralls Corp v. Committee on Foreign Investment in the United States.18 Fourth, it introduces FIRRMA by discussing the reasons for reform and noting the changes in scope, procedure, and reviewability of decisions. A. Foreign Direct Investment (FDI) Foreign direct investment occurs when an investor, either a company or an individual, domiciled in one country, invests capital into a company, or other projects, in another country.19 For example, if a company owned by Chinese nationals purchases an American business, the investment would be considered FDI. Traditionally, inbound funds trigger FDI status when the foreign investor acquires ownership or control of over 10% of the domestic company.20 The United States has long held an Open Investment policy that welcomes FDI due to its economic benefits to the inbound nation.21 This policy has encouraged continued foreign investment by assuring investors around the world that the administration in power will remain committed to the general principal that all investors should be treated in a fair and equitable manner under the law.22 FDI’s Effect on the American Economy The United States is consistently the top ranked destination for FDI and it arguably plays a vital role in American economic prosperity.23 In 2016 alone, the United States received FDI of $365.7 billion as a result of acquisitions of U.S. companies.24 Additionally, foreign-owned factories in the United States are responsible for nearly one-fifth of all U.S. exports.25 This influx of capital allows some companies to grow and develop new product lines. For example, inbound foreign direct investment by BMW enabled a $750 million expansion of the BMW America plant in South Carolina.26 While the net benefit of FDI in certain contexts is debated by scholars, FDI provides over 12 million jobs in the United States, which is over 8.5% of the labor force.27 ii. FDI and National Security Increases in FDI, however, also produce national security concerns, particularly in the areas of trade disputes and intellectual property transfers. If the economy becomes too dependent on FDI, foreign countries can use the threat of decreased FDI as bargaining leverage in international negotiations.28 The possibility of foreign influence and control of the economy, especially in sectors pertaining to critical infrastructure, has fueled arguments opposing unregulated FDI on the basis of national security concerns.29 For example, the Qualcomm- Broadcom transaction threatened to grant a foreign company significant influence over the supply of semiconductors, a key component found in all cellphones, computers, vehicles, missiles, and radar systems.30 Additionally, foreign ownership of American businesses can enable the theft of American technology through the transfer of intellectual property.31 Foreign ownership of intellectual property often increases the likelihood of trade secret misappropriation because some foreign government policies force disclosure while other foreign legal regimes do not penalize unauthorized intrusions into computer networks.32 Once owned by a foreign entity, the jurisdictional capacity of the United States to restrict access is limited; protecting the IP from being stolen or reaching U.S. adversaries becomes a complex matter of international politics.33 In the Qualcomm example, in addition to the economic implications of supply control, the foreign access to intellectual property found in semiconductor manufacturing would expose the United States to heightened threats of cyberwarfare.34 As a result, the interagency body, the Committee on Foreign Investment in the United States (the “CFIUS”35) reviews transactions involving FDI to assess the impact on the U.S. economy and national security.36 B. The Origins of CFIUS Before elaborating on the inadequacy of the CFIUS regime, it must be noted that CFIUS is not new. FIRRMA did not create a new body for executive review; it expanded the scope of an existing and authorized mechanism. This section gives an overview of the origins of CFIUS, its unique creation, initial intent, and ultimate codification for the purpose of acknowledging the legitimacy of the authority delegated to CFIUS. Inbound foreign direct investment in the United States increased in the 1970s due to the depreciation of the dollar relative to other currencies.37 This relative depreciation made it extremely cost efficient for foreign investors to purchase ownership in American companies. At this time, the Organization of the Petroleum Exporting Countries (OPEC) gained enormous surpluses from its oil embargo on the United States and \ the coinciding U.S. energy crisis.38 Concerned over this trend, Congress passed the Foreign Investment Study Act of 1974 which reported the current state of FDI monitoring as inadequate.39 Fueled by the Study Act report, legislators feared OPEC surpluses would be used to buy critical U.S. assets for political reasons.40 In a bid to ease legislators’ concerns over OPEC investment, President Ford signed Executive Order 11858 establishing CFIUS in 1975.41 Congress then addressed the already operational CFIUS in an amendment to the Defense Production Act of 1950 (the “DPA”) which expressly granted the Executive branch the authority to review certain \mergers and acquisitions for national security purposes.42 This power has been delegated, by Executive Order, to CFIUS.43 In 1988, Japanese companies were the leader in FDI in the United States and primarily invested into high-technology industries.44 Unease over rise in foreign investment and Japanese ownership led Congress to change Section 721 through the “Exon-Florio” Provision.45 Notably, this legislation eliminated \any discrepancy regarding whether the President needed to declare a state of emergency to block a problematic transaction by giving the President explicit authority to take action whenever he considered it “appropriate” to do so, as long as he clarified that (1) other laws inadequately address the transaction risks and (2) a credible threat to national security exists.46 A series of transactions involving foreign government entities, as opposed to foreign private entities, once again ignited political pressure to further strengthen CFIUS. 47 An example of this trend includes the French government owned Thompson C.S.F.’s offer to purchase LVT Corporation’s Missile Division which drew significant congressional attention.48 In 1992, legislators amended Exon-Florio through the “Byrd Amendment.”49 Attempting to signal the importance of transaction review, Congress used the “Byrd Amendment” to require CFIUS to investigate if the acquiring party was “controlled by or acting on behalf of a foreign government.”50 Despite these amendments however, critics of the legislation viewed the United States as still “dangerously defenseless against an onslaught of strategic foreign buyouts and acquisitions.”51 C. 2007 Legislation: CFIUS under FINSA In 2006, the Alcatel-Lucent acquisition and Dubai Port’s World deal led to a renewed interest in CFIUS.52 The backlash from these two highly broadcast deals urged Congress to pass FINSA.53 FINSA reformed the CFIUS process and established the decade long regime that serves as a baseline for later analysis of the changes implemented in FIRRMA.54 This section will examine the FINSA guidelines for CFIUS review relating to overall structure and purpose. Next, the procedural process of review under FINSA is outlined by defining the initial triggering criteria, the Committee review period, and the role of the President. Finally, FINSA’s bar on judicial review of CFIUS decisions is demonstrated through Ralls Corp. i. Guidelines for CFIUS Review FINSA defined the type of transaction the Committee should review, the distribution of Committee power, and the goal of the review process as understood by Congress at the time they enacted the legislation. Covered transactions were defined as “any merger, acquisition, or takeover . . . by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.”55 Although FINSA did not explicitly define ‘control,’ the Treasury Department states that control is not determined by a numeric benchmark, but rather by a subjective determination of power, direct or indirect, exercised or exercisable, to direct or decide matters affecting the entity.56 \Transactions were not considered covered under CFIUS jurisdiction if they were undertaken “solely for the purpose of investment” with no intent to direct business operations, meaning they resulted in the ownership of less than 10% of the voting securities or were undertaken by a financial investment institution through “ordinary course of business for its own account.”57 For example, consider a passive investment by a foreign national as a limited partner of an investment fund. If that fund has a general partner who is not a foreign national, then when that fund purchases a shareholder interest in a domestic corporation, the “control” required for CFIUS jurisdiction would not likely be satisfied.58 No Single Agency Holds Authority CFIUS is a regulatory committee of the Executive Branch with representatives from multiple government agencies.59 The interagency Committee is headed by the Secretary of the Treasury; the Committee includes permanent members identified as the heads of nine departments; however, other departments and advisors participate on a case-by-case basis when necessary.60 The Treasury Department has been unsuccessful \in implementing an organizational structure to effectively coordinate the synchronization of these agencies’ efforts thus far.61 The Purpose: National Security The predominant goal of the CFIUS body has always been to investigate business transactions involving foreign investment that could impair national security.62 FINSA broadened the scope of economic activity subject to CFIUS review by stating that “the term ‘national security’ shall be construed so as to include those issues relating to ‘homeland security’, including its application to critical infrastructure.”63 According to the Committee, “[n]ational security risk is a function of the interaction between threat and vulnerability, and the potential consequences of that interaction for U.S. national security.”64 A blatant example of a deal featuring this type of national security risk is the 2016 Chinese Fujian Grand Chip Investment Fund’s attempted acquisition of Aixtron, a German-based technology with assets in the United States.65 President Obama blocked this deal because it involved semiconductors, partially produced in California, that were used in foreign missile defense systems.66 ii. CFIUS Review Process Retro-active Review, Pro-active Application, SEC Filings CFIUS may initiate a review of a covered transaction sua ponte.67 SEC filings and press releases can draw the Committee’s unsolicited attention and lead to a review proceeding. Alternatively, either party to a covered transaction could initiate a CFIUS review by providing written notice to the Committee.68 Under FINSA, parties never needed to file for CFIUS; they only strategically exercised the option to file for CFIUS review voluntarily.69 If parties chose to file, they hoped to avoid the otherwise lingering risk that CFIUS would be able to retroactively investigate and undo the deal.70 There has never been a statute of limitations imposed on CFIUS review; the Committee can investigate before the covered transaction is completed, while the covered transaction is pending, or \ retro-actively after the covered transaction closed.71 Historically, parties could only obtain a legal “safe harbor” and estop CFIUS from potentially reversing the agreement if they chose to voluntarily apply for CFIUS review and ultimately received a determination that no national security risk remained unresolved.72 At any stage of the transaction, the decision to apply for review by filing voluntary notice involves risk. For example, in one of five transactions blocked by the President, the Ralls Corp windfarm purchase, the parties strategically filed a delayed notice.73 Here, CFIUS did not review the purchase until five months after the transaction concluded but still retroactively required the divestment of the acquired assets.74 Review Committee Under the FINSA regime, the review process lasted thirty days during which the Committee considered eleven factors to determine if and how the proposed or completed transaction affected national security.75 If risks were not resolved after the thirty-day review period, then a forty-five day National Security Investigation followed.76 At the commencement of the forty-five day formal investigation, the Committee sent a recommendation letter to the President relaying the Committee’s approval, rejection, or suggested contingent mitigation measures.77 President Decision This structure gave the President fifteen days to make a final determination in the form of a Presidential Order.78 FINSA added criteria for the President to take into consideration and ensured that the President “is under no obligation to follow the recommendation of the Committee to suspend or prohibit an investment.”79 Nevertheless, before blocking a transaction, the President still needed to determine that (1) other laws did not sufficiently protect the country, and (2) that there existed “credible evidence” that if the transaction were to be executed, it would impair national security.80 For example, if the deal would otherwise be blocked by the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) due to antitrust concerns, then there is no reason CFIUS must intervene and the first requirement would not be met. The second requirement of credible evidence that national security would suffer is more subjective. An example of a deal that may not meet this criteria is the foreign sale of a company like Coca-Cola or Levi’s; though loved American brands, their foreign ownership would not likely create realistically foreseeable threats to matters of national security. iii. Judicial Challenge Since its establishment, CFIUS’ intentional opacity has created controversy.81 FINSA furnished Congress with confidential briefings on covered transactions and unclassified reports were released by the Committee, but this did not increase transparency to the parties involved or the general public.82 The resulting discretion granted to the President is “not be subject to judicial review.”83 This limited transparency led to the only CFIUS court case to date: Ralls Corporation brought suit constitutionally challenging President Obama’s 2012 mandate that it divest an Oregon Windfarm Project for alleged national security threats.84 Though incorporated in Delaware, Ralls Corporation’s owners were Chinese nationals, and thus their purchase of four American LLCs with windfarm location in and around restricted Navy airspace fell “within the ambit of the DPA.”85 Ralls disputed the constitutionality of the CFIUS orders on Fifth Amendment grounds claiming a right to review and rebut evidence considered.86 The court determined that FIRRMA afforded no lack of reviewability to the CFIUS Committee decision87 and that the Presidential Order deprived Ralls of its property interest while violating the due process clause.88 Though the court clarified that “due process does not require disclosure of classified information supporting official action,” the court found that the President, or CFIUS acting on his behalf, had the duty to make the unclassified materials used in his determination available to Ralls and to provide Ralls the opportunity to dispute these materials as a matter of due process right.89 The holding did not require the administration to disclose its reasoning for the determination. Nevertheless, this ruling is highly criticized because the administration’s opinion on delicate foreign policy issues can be revealed by the choice of documents left unclassified and therefore able to be disclosed to parties.90 Scholars point out that in practice, this ruling is unlikely to expand transparency because there are no legal requirements to limit which documents the government files as classified.91 Ralls Corp is unlikely to help future parties like Ralls because beyond the disclosure of un-classified documents, which may become increasingly limited in number, there is no judicial review of CFIUS decisions on merits.92 D. 2018 FIRRMA Legislation In 2018, CFIUS endured its latest legislative overhaul. FIRRMA tightened the oversight of FDI, a subtle but significant shift from the long- proclaimed Open Investment policy. This section outlines the climate surrounding the push for CFIUS reform, the reasons FIRRMA passed, and the key changes the bill makes to the CFIUS regime. In Part II, these changes are critiqued in light of the specific issues they seek to resolve. FIRRMA is the embodiment of frustrations felt by the inbound and outbound trade and investment relationship with China,93 the military’s dependence on private sector developed critical technology, and the increase in global citizenship ideology among Americans.94 The trade deficit in China has crept to -$350 billion annually and Chinese venture capital funds run rampant in Silicon Valley investing in critical technology.95 For example, Danhua Venture Capital (DHVC) is a Chinese venture-capital firm based near Stanford University that the Chinese government established and now funds.96 These contributions are not minute or rare. The Defense Innovation Unit Experimental (DIUx) estimates that Chinese investors injected up to $4 billion into early-stage venture deals in 2015.97 In 2016, legislators started advocating for various plans that would have strengthened the secretive CFIUS by allowing it to scrutinize the surging inflow of investment from China.98 By 2018, pressure from the Trump administration over Chinese and other foreign investments exposed the limits of CFIUS scope under FINSA and propelled legislators to move CFIUS reform forward by placing FIRRMA in the “must pass” National Defense Authorization Act.99 The next era of CFIUS legislation received the President’s signature on August 13, 2018.100 i. The Roots of FIRRMA Unlike FINSA, FIRRMA did not arise out of a particular crisis. Rather, it surfaced gradually from a growing sense of foreign policy frustration and highly public transactions that highlighted CFIUS’ concerns. The initial worries over suspect OPEC investment have been replaced by skepticism over Chinese and Russian “economic espionage” as politically motivated investment and trade secret theft in the United States continues to grow.101 Vulnerability to such exploitations is no secret; the counter-intelligence efforts often thought to have died with the Cold War have simply reemerged on the new battleground of the global marketplace.102 Previous generations of Americans felt threatened by Russian spies and feared foreign invasions, but today, fear derives from foreign data breaches and economic dependence. In particular, Congressional Reports address both the rise of foreign investment by Chinese state-owned enterprises (SOEs) and the fear that SOEs invest to meet strategic political objectives rather than passive economic gains. 103 The number of transactions terminated through CFIUS significantly increased under the Obama and Trump administrations. From 2011 to 2016, the number of transactions reviewed by CFIUS increased by 55%.104 Historically, presidents used CFIUS to block five transactions: (1) China National Aero-Technology Import and Export Corporation acquisition of MAMCO Manufacturing (1990); (2) Ralls Corporation completed acquisition of an Oregon wind farm project (2012); (3) Chinese firm Fujian Grand Chip Investment Fund attempted acquisition of Aixtron, a German-based semiconductor company that held U.S. assets (2016); (4) Chinese investment firm, Canyon Bridge Capital Partners’ attempted $1.3 billion acquisition of Lattice Semiconductor Corporation; (5) Broadcom’s attempted $117 billion takeover of Qualcomm (2018).105 The magnitude of CFIUS influence must not be diminished by the deceivingly small number of blocked deals. Though unascertainable, a significant number of deals are not formally blocked but are, nevertheless, informally derailed by CFIUS. 106 For those deals that last through the initial investigation stage, nearly half are terminated by the parties in a conscious choice to avoid a negative CFIUS determination.107 Note that four of the five blocked deals occurred under President Obama and President Trump.108 The reason for this increasing trend for CFIUS intervention is necessary in the new global marketplace given the grave threat posed by the transfer of American owned intellectual property and growing concerns over cyber security.109 In the last decade, Chinese investment in U.S. technology firms shifted from primarily joint ventures or acquisitions to “greenfield” investments in venture- backed startups aimed to acquire cutting-edge technology at the early stages of development.110 Current political action by the Trump Administration, like the push for allies to prevent China’s Huawei from building Europe’s 5G network, demonstrate the urgency and importance of winning the arms race for technology.111 The collapse of the Qualcomm-Broadcom hostile takeover signaled a shift in the Committee’s concerns that previous legislation never addressed CFIUS’ active involvement in this arms race. This is the only transaction CFIUS blocked before any deal had been agreed to by the parties.112 Additionally, national security concerns presented as a possible rationale for the Presidential Order blocking the deal included references to the hypothetical decrease in research and development funding. The diminishment of funds dedicated to leading 5G technology would have allowed China to take a leadership role in that sector of the tech industry.113 ii. Changes to CFIUS As discussed in greater detail in Part II, FIRRMA made changes to CFIUS in three distinct areas: procedural structure, jurisdictional scope, and judicial forum for parties seeking a remedy. The new law expands CFIUS influence by increasing the scope of sectors subject to review, changes the CFIUS review structure and its timing, and provides a designated forum for judicial actions brought by parties.114 The newly enacted review process could impact nearly all contemplated mergers, acquisitions, and joint ventures involving any foreign entity.115 Under the old regime, a transaction’s coverage turned on whether or not a foreign entity gained “control.” Under the new statute, this bar has been lowered to whether or not a foreign entity will acquire influence over decisions.116 Additionally, “transaction” under FIRRMA now includes joint ventures.117 FIRRMA jurisdiction now includes real estate transactions but fails to cover non-property related “greenfield” investments.118 New businesses often exist without real estate assets and thus, this type of new investment remains outside the scope of review.119 CFIUS now has authority over transactions between foreign parties and U.S. companies with access to sensitive personal data of U.S. citizens. FIRRMA expands CFIUS covered transactions to include all “critical technologies,” a category which is currently vague but will likely be determined in practice by the Department of Defense (DOD).120 Moreover, FIRRMA implements procedural changes by: adding an additional, sometimes mandatory, step to the review process; implementing filing fees; extending the number of days for several stages of review;121 and permitting the Committee to suspend a transaction on its own.122 Lastly, while the rationale of the Committee and President will remain undisclosed, FIRRMA outlines that civil actions may be brought in the United States Court of Appeals for the District of Columbia Circuit where some evidence will only be available to judges, not the parties.123 E. Key Takeaways To summarize, the interagency body called CFIUS reviews transactions involving FDI to assess the impact on the U.S. economy and national security.124 After an investigation, the Committee gives a recommendation to the President who then decides whether to approve, block, or impose restricting conditions on the transaction.125 Functionally, the impacted parties do not have the ability to appeal the ultimate determination because they do not have a right to have the reasoning by the President disclosed. The new FIRRMA legislation greatly expanded the number of reviewed transactions by increasing the scope of CFIUS jurisdiction to include transactions resulting in foreign access to sensitive personal data of U.S. citizens, “critical technologies,” and real estate. FIRRMA does not eliminate the threat of foreign entities, including SOEs, funding startup companies in the United States. Lastly, FIRRMA increases the burden on parties by allowing CFIUS to require mandatory declarations, impose filing fees, and provide delayed responses from the Committee. Moving forward, this foundation will be critical in analyzing the interdependent aspects of the new CFIUS regime. Part II will build on this base to discuss how the CFIUS jurisdiction expansion will have an economic impact on the amount of inbound FDI. Additionally, Part II uses this foundation to address why security issues surrounding start- ups funded by foreign investors are not resolved by FIRRMA. Lastly, the background will aid discussion about FIRRMA’s effect on judicial review, transparency, and potential constitutional issues under the new mandatory filings. Analysis Although FIRRMA’s bolstering of CFIUS power is a necessary shift, these changes fall short of achieving their goal. FIRRMA does not effectively mitigate the national security threat of foreign control over the same sources of cutting edge intellectual property on which the U.S. military depends. FIRRMA’s overly broad restrictions on investment come at the cost of lost capital injected into the U.S. economy, which contributes to necessary economic growth and employment.126 This increased breadth, combined with FIRRMA’s inefficient structure, may actually intensify national security concerns under FIRRMA; CFIUS’ ability to accommodate the influx of reviews rests on the Treasury Department’s ability to coordinate amplified operations among all Committee member agencies. Furthermore, a deceleration of American innovation caused by any underfunding of private sector research and development may harm national defense operations. Ultimately, from an economic standpoint, FIRRMA is likely to cause unnecessary inefficiencies that will probably over-deter advantageous FDI and thus prove detrimental to economic prosperity. Regarding national security, FIRRMA fails to close loopholes in the regulatory procedures that are necessary to resolve the threat of unregulated foreign investment.127 To prove these arguments, this section will analyze the most influential changes FIRRMA made to CFIUS. Each of these changes will be critiqued on two bases: Whether it is likely to achieve the intended goal of further preserving national security, and (2) Whether it does so efficiently so as to preserve the interests of commerce. First, this section addresses how FIRRMA adjusts the scope of CFIUS jurisdiction and critiques the ability of CFIUS to accommodate these changes without compromising its ability to serve as an adequate gatekeeper. Second, the discussion analyzes the effect of adjustments to the application and review procedure. Third, this section examines resurfacing Fifth Amendment issues argued in Ralls Corp in light of the now mandatory application requirement. A. Increased Scope of CFIUS Jurisdiction FIRRMA expands the scope of CFIUS in five key ways. First, the criteria triggering FDI is shifted from enabling foreign “control” of the business to allowing foreign “influence” over business activities, and accordingly, joint ventures are now a covered transaction form. Second, the legislation adds foreign access to sensitive personal data of U.S. citizens as a triggering element for CFIUS review. Third, the undefined sector of “critical technologies” is added to the existing sector of critical infrastructure as an area of the economy in which foreign involvement would pose risks to national security. Fourth, real estate transactions of both developed and undeveloped land involving foreign entities now fall under CFIUS jurisdiction. Lastly, FIRRMA provides a potential carve-out for some financial institutions with foreign limited partners benefiting from passive investments in the United States. i. Change from Control to Influence In the past, CFIUS interpreted “control” very broadly.128 FIRRMA recalibrates this benchmark to the lower standard of “influence.”129 FIRRMA states that CFIUS covers any direct or indirect investment in a U.S. business that gives a foreign person access to “any material nonpublic technical information,” access to the board of directors, or access to decision-making beyond basic shareholder voting rights that could influence company involvement in sensitive personal data; critical technologies; or critical infrastructure.130 This provision “is designed to capture small investments that might not otherwise fall within CFIUS jurisdiction because they lack the previously-required threshold of ‘control.’”131 It is reasonable to predict that this term too will be construed to include the smallest interests feasible.132 Additionally, transactions involving foreign entities are covered if a foreign government possesses a substantial interest in a U.S. company either directly or indirectly.133 The code’s instructions to the Committee indicate that the definition of “substantial interest” includes a situation where the government retains “influence on the actions of a foreign person.”134 This is significant because any corporation doing business in an authoritarian country, like China, could potentially meet this expanded criteria. The Chinese government is notorious for controlling its private sector enterprises and establishing government owned businesses, including financial firms like venture capital funds.135 Specifically, China’s 2017 National Intelligence Law requires the support and cooperation of Chinese organizations and citizens in the government’s intelligence operations.136 In alliance with concerns over foreign “influence,” FIRRMA expands CFIUS to cover an additional type of transaction.137 CFIUS now covers joint ventures despite heavy protest by large American technology firms. 138 Previously, FINSA did not categorize joint ventures as a covered transaction type and thus FINSA permitted foreign entities to collaborate with corporations without exposure to CFIUS review because the technical agreement structure was not a merger, acquisition, or takeover. This difference in strategic corporate structuring no longer permits the unchecked transfer of information and resources.139 Though lowering the standard from “control” to “influence” adequately encompasses concerns associated with the uncertain impact of authoritarian government on private entities, this shift also creates the possibility that the Committee could choose to embark down an inefficient slippery-slope that could result in excess filings for transactions that do not pose significant national security threats.140 For example, if the Committee were to interpret its authority and the “influence” standard to the broadest extent, it could mean that American companies—including big household names like Walmart, Apple, Boeing, and Starbucks—with operations in China could be burdened to file for CFIUS review for every merger, acquisition, and joint venture they undertake so long as they remain active in Chinese markets where the Chinese government has authoritarian control.141 Excessive filing would hinder CFIUS’ goal of protecting the United States economically and would increase the risk that the regulatory mechanism will be overburdened, causing the potential for deterioration in review quality where it is needed to protect national security. ii. Sensitive Personal Data FIRRMA further expands CFIUS jurisdiction by classifying any transaction that would result in foreign access to sensitive personal data of U.S. citizens as a covered transaction. In the wake of private data scandals with Equifax, Yahoo!, and Facebook, the European Union’s recent implementation of data legislation brought the issue of personal data privacy to the forefront of political discussion.142 Unlike the United States, the European Union consolidated and synchronized the law on data privacy by passing the General Data Protection Regulation (GDPR) that became effective in May 2018.143 The CFIUS Committee expressed its concerns over data in the MoneyGram-Ant Financial deal, though both parties terminated the agreement before reaching the President for final review.144 Congress reacted to MoneyGram-Ant Financial, recent data scandals, and international pressure by giving CFIUS jurisdiction over data.145 CFIUS is the wrong mechanism to implement this type of legislation. Implementation of international data transfer regulation through CFIUS will burden the efficiency of a critical national security committee and unnecessarily hinder economic prosperity across the United States because (1) “sensitive personal data” is left undefined; and (2) broad interpretation could expose nearly all companies within the United States as well as many overseas to CFIUS review of their transactions whenever a foreign entity is a party. FIRRMA does not define “sensitive personal data,” but the GDPR legislation uses the same term. The European law broadly defines it as any data relating to an identified or identifiable person.146 Outside the GDPR, whether data is considered “sensitive” is subjective as is evidenced by various levels of publication by individuals. For example, sexual orientation and political preferences are included in the GDPR list of protected data, but anyone on Facebook can attest that it is common for individuals to “share” this type of information openly online.147 Because FIRRMA failed to define “sensitive personal data,” the Committee is left to eventually draw the line somewhere. Even if defined, imposing regulations on the otherwise legal transfers of data is inadequate because there will inevitably remain rampant unnegotiated breaches and no parallel requirements are imposed on companies to give users some control in what happens to their data. Adding to CFIUS’ duties will not solve the massive data privacy problem that the Legislative Branch faces.148 FIRRMA’s expansion of CFIUS obligations, including international transfers involving this form of asset, may result in inefficient reviews, again depleting resources that are necessary to investigate other national security matters. While “sensitive personal data” is yet to be defined, under the broadest possible interpretation of the term, it is difficult to identify any industry without access to some form of data that could be considered “sensitive” and “personal.” For example, if an individual’s financial data is considered sensitive and personal, then most end-user service providers and merchants could be subject to CFIUS jurisdiction under FIRMA because they collect individuals’ credit card numbers. For service providers that do not charge for their platforms, they profit by running ads—ads that are tailored by individual preferences identified through data collection.149 Moving offline, consider the healthcare industry: both researchers and providers retain medical information identifiable to their patients. Only strictly business-to-business firms appear safe from any potential expansion of the “sensitive personal data” category. Ultimately, the incomplete structure of data protection law in the United States likely negates the potential benefits of this expansion. The issue of data protection must be acknowledged, and although it poses risks that relate to matters of national security, CFIUS is not the proper channel to handle this issue if it is to remain a genuine gatekeeper of U.S. economic security threatened by inbound foreign direct investment. FIRRMA designs CFIUS to review foreign transactions exclusively and does not address any disclosures or protection measures for harboring data without intent to transfer on the international market. CFIUS is not designed to handle complex data analytics and does not currently specialize in the technical expertise needed to ensure data regulation compliance. Further, the increase in transactions CFIUS would need to review as a result of this provision will likely burden the Committee’s ability to efficiently identify national security issues involved in other transactions. Critical Technologies Taking aim at Silicon Valley, FIRRMA adds the new category of “critical technologies” to the list of covered transactions. This change is significant because it is the first “depart[ure] from CFIUS’ exclusive focus on reviewing inbound foreign investment, and expand[s] its remit to include outbound contributions of certain intellectual property by U.S. businesses.”150 FIRRMA shows that Congress is no longer only worried about foreign ownership of critical infrastructure within the United States but is equally concerned about critical technologies leaving the control of the United States due to the rise of the global marketplace. The consequence of this shift led FIRRMA to add a special covered transaction category to trigger CFIUS review whenever “critical technologies” are involved in any foreign transaction regardless of the structural transaction type or size of the investment. Interestingly, FIRRMA reacts to the fear of losing technological superiority151 by eliminating incentives to stay in the lead by making it more difficult for these innovative industry leaders to operate in the efficiency- driven economy.152 Absent regulatory oversight of intellectual property transfer, national security depends on the United States being the first to access new technology and innovate so rapidly that by the time that technology reaches foreign hands, it is irrelevant because the United States has already moved ahead.153 Agencies dedicated to national security including the DOD and the Department of Homeland Security have grown increasingly dependent on the private sector and have forged innovative partnerships in Silicon Valley.154 In the field of emerging technologies, products designed and used for commercial purposes are increasingly serving the needs of the military.155 As a result, both an economic collapse of the California tech hubs and the theft or acquisition of intellectual property used by the DOD would pose risks to national security. Yielding to pressures driven largely by rapid innovation, Congress left the specific definition of this new triggering category largely undetermined. FIRRMA does not limit the “critical technologies” to only those that are currently utilized by the military; Congress tactfully avoided defining what technologies are considered critical because, with today’s rapid pace of innovation, the relevancy of a strict bright-line list of currently critical technologies would quickly expire.156 The legislation avoids creating a list by outlining a compilation of lists determined by other government entities that are updated regularly.157 CFIUS identified this rapid change in technology as a primary compelling circumstance for implementing a pilot program.158 CFIUS Additions Via Recommendations FIRRMA further leaves room for those lists to expand by allowing the Committee chairperson to recommend additional technologies to add to one of the lists the legislation includes.159 While the Committee expects to reach consensus on such matters, to have eleven government agencies all in agreement is unlikely. Each department has its own interests and perspectives, and thus are likely to value concerns differently. On a practical level, the DOD will heavily influence the ultimate defining of “critical technologies.”160 This is disturbing because the DOD is able to single out any industry and operates in the “black.”161 The DOD can make a claim to the Committee and support this claim by stating that it cannot disclose its reasoning or evidence while imposing significant transaction costs on entire industries, not just particular deals. This is bad public policy due to the potential for unchecked abuse of power. Note further, that the President of the United States again maintains control of the final contents of the list the CFIUS Committee can amend.162 Potentially for political purposes, the President could subject entire industries to the negative effects of CFIUS review borne by the parties who must seek approval; this presents an additional opportunity for the abuse of power. For example, it would be legal, but potentially unwarranted, for the President to remove the Committee’s hypothetical addition of pharmaceutical development as a critical technology sector. The Committee may have justifiable reason for making a suggested addition, however, the President is not obligated to present a rationale for accepting or ignoring the Committee’s proposal. Consequently, the underlying motivation behind the President’s action to shelter or subject a particular industry could be improper, such as to please campaign donors or a supportive voter demographic. Anticipated Breadth and Uncertainty The current pilot program, effective as of November 10, 2018, includes twenty-seven industries identified by NAICS code.163 Among these twenty-seven are research and development in biotechnology and nanotechnology, and manufacturing of semiconductors, optical instruments and lenses, batteries, turbines, petrochemicals, aircrafts, and radio and television broadcasting and wireless communications equipment.164 This initial list focuses more on hardware than software which is unlikely to continue as the DOD, with the initiative of protecting the United States from both bombs and cyberattacks alike, increases its involvement.165 No barriers prevent the government agencies delegated with the responsibility of updating the included lists, or CFIUS, who can recommend that additions be made, from adding hundreds of NAICS codes or abandoning the code distinctions in favor of general, sector-wide industry terms. In his praise for the strengthened CFIUS authority, President Trump emphasized passing FIRRMA as a base point saying, “[w]e’ll see if that’s good enough, and if it’s not, then we will keep adding on to it.”166 Given national security’s dependence on the private sector, this expansion may be counterproductive because the potential overbreadth could cripple the quick pace of business that enables Silicon Valley to thrive. Critical industries are being protected to aid the preservation of their globally advantageous position, which accordingly aids national defense. Nevertheless, broad or quickly changing definitions are necessary because the government is not well-equipped to identify which specific new technologies today will become driving foundational technologies in the future and present threats to national security.167 To exemplify this point, consider the Soviet Union’s acquisition of ball bearing technology.168 The U.S. government never anticipated that this knowledge would eventually become a critical element in the Russian ownership of precision-guided missiles.169 This is unacceptable; national security must be preserved by limiting access to intellectual property related to emerging technologies. This change to CFIUS is critical to national security and has the potential to serve as an effective solution to current demands, but it is equally likely that the vagueness of FIRRMA will cause a chilling effect and deter beneficial investments. The ease of expanding the definition of “critical technologies” creates uncertainty in the market. Furthermore, this uncertainty will deter foreign investment and decrease the market of acquirers and investors. This could harm American companies both at the beginning of their growth cycle, should venture capital become more competitive without foreign funds in the market, and at the end of their development cycle by limiting the number of potential buyers. In conclusion, by leaving so much undetermined, FIRRMA increases uncertainty which may weaken incentives needed to drive innovation and protect the nation in the new age of defense. iv. Real Estate and the Greenfield Problem Prior to FIRRMA, transactions with foreign entities involving real estate within the United States did not automatically trigger CFIUS review. While past blocked deals sometimes involved real estate, like the Ralls Corp. windfarms, the involvement of land did not itself subject the transaction to review, but rather, the CFIUS jurisdiction derived from the shift in control of an existing American businesses to foreign investors.170 The amendment clarifies that it is use of land and not ownership of land that drives concern.171 Not only do purchases qualify but also any leases or concessions to a foreign entity.172 The reasoning behind this shift focuses on national security breaches that could develop from the use of land that does, or could, serve as an airbase or port, land that is near military bases, or land close to other sensitive government facilities.173 President Trump highlighted this feature, stating that through FIRRMA, “we’re doing a lot of things against foreign acquisition of property, and especially where they’re near sensitive military installations. So this was a very big deal.”174 This amendment brings two significant benefits. First, it establishes predictability by avoiding questionable filings which eliminates parties’ search for inscrutable information. Second, it stops the establishment of new companies by foreign entities when there is a land purchase involved. Unfortunately, it does not go far enough because FIRRMA does not cover the issue of funding new, not currently formed companies on paper without current physical assets.175 FIRRMA Successfully Avoids Questionable Filings Parties involved in the foreign purchase of land have been uncertain whether they need to submit notice to CFIUS, or if filing only wastes resources. By nature, undisclosed military projects will not advertise their location, and as a result, no amount of due diligence by parties guarantees that a location is absolutely clear of national security concerns. FIRRMA aids process efficiency by eliminating the uncertainty surrounding foreign transactions with real estate assets. CFIUS review now applies to three types of land- related foreign direct investments: (1) acquisitions of existing U.S. companies with land assets; (2) the lease and use of property known as “brownfield” investments; and (3) the acquiring of vacant land for later development.176 Parties engaging in this type of FDI no longer need to debate the best course of action—CFIUS has jurisdiction. To clarify, FIRRMA efficiently restricts the real estate category. Not every real estate transaction in the United States will be reviewed by CIFIUS.177 That would be a gross misuse of resources by the Committee, and FIRRMA appropriately acknowledges this by providing a carve-out for minor transactions like those regarding single family dwellings.178 Like all CFIUS jurisdiction, the focus rightly remains on FDI, and thus only real estate transactions involving FDI are covered. FIRRMA Fails to Cover Establishment of Greenfield Investments Though the real estate expansion effectively and efficiently accounts for land purchases, it is probable that FIRRMA will ultimately fail to address “greenfield” investments.179 Today, the term “greenfield” investment refers to the establishment of subsidiaries and the funding of new business ventures. Historically, Congress tailored CFIUS provisions to address national security concerns in mergers and acquisitions (M&A) rather than new investments.180 The logic behind focusing only on originally intended transaction types loses validity now that FIRRMA added the real estate category, which by default includes new investments in land. Hypothetically, foreign entities could establish a subsidiary in the United States that does not incorporate the elements of real estate, purchase of an existing asset, or entail a merger or joint venture with an American business. This legislation requires one of these triggering elements to occur concurrently with the establishment of a business entity to be fully effective in stopping the invasion of state-owned enterprises (SOEs).181 The resulting paper entity from this hypothetical structuring would not be free to operate as an American company and avoid CFIUS in the future when engaging in later transactions, but in the interim, the new entity would be able to hire skilled American innovators and engage in research and development. FIRRMA likely does not effectively ensure that the next great breakthrough in American innovation is controlled by American financial backing. Congress knew well of the issues associated with SOE market entrants, from China specifically.182 A Senate Hearing testimony back in 2017 acknowledged that “when you go to Silicon Valley, it is sort of an open secret that Chinese firms are all over the place trying to acquire brains, technology, [therefore] trying to get around export controls and CFIUS.”183 Furthermore, the DOD stressed its concern over unregulated startup investments into cutting edge technology in areas like artificial intelligence, robotics, and blockchain.184 One change suggested by the DOD in its 2017 Defense Innovation Unit Experimental (DIUx) draft report was to discourage the funding of U.S. start-ups involved in developing cutting-edge technologies.185 Early advancements in emerging areas of technology like these commonly become the foundational building blocks for innovation in the future.186 FIRRMA’s failure to add the transactional form of initial establishment, the modern “greenfield” investment strategy, to the scope of CFIUS likely means that start-up investments that do not involve an existing U.S. entity are not covered under CFIUS. This constitutes a lapse in CFIUS’ ability to protect the national security interests of the United States by exposing the nation to strategic ownership of potentially critical technology by foreign entities, including SOEs.187 FIRRMA supporters argue for the need to protect the innovation of American minds for both economic independence and military advancement purposes through the “critical technologies” addition to CFIUS’ scope. However, those benefits could escape through this establishment, and later employment, loophole. Chinese SOEs are able to bet early on American technological innovation and if they bet correctly— invest by employing the creators of the next big Silicon Valley start-up— then the United States will lose the crucial advantage the Legislature appears intent to maintain.188 The correct balance of national security and economic activity is difficult to ascertain but the correct balance is unachievable if there are potentially harmful investments going not just uninvestigated, but undocumented as foreign until it is too late. v. Investment Fund Carveout FIRRMA evades the complex issues for CFIUS reform attributable to the integration of foreign funds in American financial institutions. In its shift to cover noncontrolling investments in U.S. businesses involved with critical technology and personal information, drafters of FIRRMA needed to decide how to categorize massive investment funds that have both significant influence and foreign beneficiaries.189 Complicating matters is the prerogative that it is nearly impossible to verify which entities are the true beneficiaries of these investments.190 Even if possible, implicating all foreign investment would overburden both CFIUS and negatively impact the stock market due to uncertainty and speculation. As a result, FIRRMA wisely left indirect investments outside CFIUS’ expanded jurisdiction.191 Foreign investment into investment funds does not trigger CFIUS review so long as (1) the fund is managed by a general or managing partner; that partner is not a foreign person; and (3) the investment fund satisfies that any foreign investor is only a limited partner.192 As a limited partner, the foreign person does not control the fund’s investment decisions, determine the compensation of the general partner, or have access to trade secrets or board of directors of the U.S. companies with which the fund invests.193 This is likely the best temporary position to avoid overburdening both funding mechanisms throughout the country and the Committee’s current enforcement limitations. FIRRMA likely falls short of implementing an optimal long-term solution needed to ensure passive investment does not become active in the aggregate and threaten national security. If a large portion, or even the majority, of an investment fund is attributed to foreign investors there may be reason for CFIUS to want Congress delegated jurisdiction to review the large transactions involving the fund. By having undisclosed economic strongholds, it is possible that foreign investors could systematically divest and cause ripple effects throughout financial markets. Any threat to economic stability could delay innovation into critical technology directly impacting national defense. In the long term, the threat of unified foreign control through millions of small investments must be mitigated and FIRRMA does not adequately provide a plan that addresses this concern. CFIUS is unlikely the best resource to watch the market as a whole due to capacity issues with oversight. Rather CFIUS should work in unison with b e t t e r e q u i p p e d regulatory agencies like the Securities and Exchange Commission (SEC) that have the expertise to handle massive data analytics.194 B. Procedural Changes From a procedural perspective, FIRRMA is significant because it (1) imposes a mandatory filing of declarations for certain triggering transactions; (2) expands the duration of days permitted at each stage of CFIUS review; and (3) gives the Committee authority to implement sanctions before giving its recommendation to the President to make a final determination. Because these adjustments are accompanied by an expanded definition of covered transactions, they are likely to create a delay in the transaction process for an unprecedented number of industries.195 By increasing transaction costs, FIRRMA’s procedure decreases the potential economic benefit derived from FDI. Mandatory Declarations FIRRMA mandates that parties privy to certain covered transactions file a mandatory declaration.196 Not only does this change add an entirely new initial step to the FDI oversight process, but it also is the first time that CFIUS filings are mandatory rather than voluntary.197 Unlike the already existing full notice filing, the declaration filing is not to exceed five pages, but all other requirements are left to the discretion of the Committee to be specified later by federal regulation.198 FIRRMA mandates declarations for covered transactions that would result in the acquisition of a “substantial interest” in a U.S. business by a foreign entity in which a foreign government directly or indirectly has a “substantial interest.”199 To illustrate, if Foreign Company A has a foreign government as a major creditor, perhaps a 20% stock purchase of U.S. Company B by Foreign Company A would require a CFIUS declaration filing.200 FIRRMA leaves the task of defining the term “substantial interest” to the Committee and permits the Committee to require mandatory declarations for any covered transactions.201 Exercising this authority would multiply the number of filings that CFIUS reviews and thus could increase the number of delayed transactions.202 On October 10, 2018, the Treasury Department released its pilot program requiring that at least forty-five days prior to the closing date of a transaction covered by the pilot program, the parties must either (a) file the new declaration form to allow the Committee to determine if a full notice must be subsequently filed, or (b) file full notice with the Committee.203 If a party’s transaction triggers a mandatory declaration but the party fails to file, it may owe a civil monetary penalty up to the value of the transaction.204 This change is effective but inefficient. Prior to mandatory filings, parties to a transaction threatening national security could possibly evade pre-closing regulatory review by strategically choosing not to file for CFIUS review. Although retroactive review always remained available, the damage associated with transfer of proprietary intellectual property is irreversible: there is no remedy for already-gleaned knowledge. By requiring particularly problematic transactions to file an initial declaration document, CFIUS can more effectively prevent irreparable harm caused by disclosing the nation’s most promising intellectual advancements. Nevertheless, the CFIUS regime has only retroactively blocked deals on the most problematic transactions. These are the same transactions where the parties are most likely to know CFIUS would take interest in the deal and have historically chosen to voluntarily file CFIUS notice as a condition to closing and thus avoid spontaneous government interference after the deal’s termination date. In conclusion, to catch deals that would have otherwise chosen not to file notice, the Committee will likely broaden the number of covered transactions that must file mandatory declarations. The benefits derived from eliminating CFIUS’ dependency on voluntary action or tipping from media coverage and SEC filings is outweighed by the likelihood of litigation205 and possible delay in CFIUS decisions on triggering transactions due to the strain to review filings from this mandatory preliminary stage. ii. Timing FIRRMA expands the duration of the CFIUS review process. First, CFIUS is granted ten business days to respond to the declaration.206 The full review now lasts forty- five days followed by a forty-five day investigation period, if necessary.207 In the case of “extraordinary circumstance,” the Committee may extend this review period by an additional fifteen days.208 Lastly, FIRRMA grants the President fifteen days to make a final determination.209 In the aggregate, this amounts to the possibility that the CFIUS process will last 115 days from the initial declaration filing to the final determination. On its surface, this change is a significant increase from the seventy- five day allotment under FINSA. However, the Committee under FINSA regularly forced parties to withdraw and refile if they failed to complete their review within the statutory allotment. For example, under FINSA, a party could be forced to wait 150 days in total because a refiling would restart the clock for Committee review.210 FIRRMA intends to stop the practice of forced refiling by mandating that the Committee file a Congressional report of incidents involving excess duration that explains the reason for delay.211 Nevertheless, in the aggregate this increase in the normal duration of the CFIUS review process will likely increase transaction costs. The detailed nature of both the information CFIUS requires to be disclosed in the notice filings and the information the Committee can request throughout the investigation period makes it unlikely that parties could evade delays by filing before completing due diligence and negotiations.212 Time is a valuable resource parties try to conserve throughout the transaction to avoid excessive transaction costs. Additionally, other regulatory hurdles, like antitrust clearance from the DOJ and FTC, often take CFIUS clearance into consideration. Thus, the delay from CFIUS can cause even further delay in the government approval process.213 By increasing the time needed to close transactions, it is highly likely that FIRRMA raises the threshold of synergistic value needed to make a rational deal. iii. Committee Action FIRRMA enables the Committee to suspend a proposed or pending action.214 Prior to this shift, CFIUS only stopped transactions once the President made a determination, though parties were free to amend their agreements to push their respective closing dates. This amendment to the CFIUS procedure is beneficial because it allows CFIUS to prevent irreparable harm that would otherwise occur if the transaction closed. This may be necessary, for example, in cases with significant technical know-how involved because the damage from the transfer of intellectual property is unable to be reversed.215 The Committee’s authority to temporarily stop a transaction for the duration of the CFIUS investigation is the most explicit evidence of the Committee acting on the President’s behalf. Unfortunately, though this change is beneficial in achieving its intended outcome, the entanglement of executive action could potentially give rise to constitutional problems with judicial review and transparency that may make these benefits too costly for the CFIUS regime to implement.216 C. Judicial Review and Transparency are Likely Unrealistic On a final note, it is critical to acknowledge the continued issue of judicial reviewability. FIRRMA explicitly allows for civil actions to be brought in the United States Court of Appeals for the District of Columbia.217 This change to the legislation creates the illusion that parties can bring suits to challenge CFIUS, but this ability is severely limited. While it is true that the possibility of Committee action being subject to judicial review could incentivize nonarbitrary decisions and better awareness of Due Process standards, actual litigation will remain a rare occurrence.218 Unfortunately for parties, the President’s reasoning is still not subject to judicial review; parties can only challenge final decisions by the President on constitutional grounds.219 Recall that the restrictions applied in Ralls Corp; FIRRMA does not give grounds to reevaluate this precedent.220 For the parties seeking recourse, this likely means that the ultimate outcome of their case will remain unaltered despite filing a civil action as the statute permits because the CFIUS structure leaves the final determination to the discretion of the President. Realistically, a suit will probably incur further unwanted fees associated with the failed transaction and still leave the practical result of the deal unchanged. Additionally, access to information remains limited. The issue with the government labeling more documents as classified—which may otherwise have been categorized as unclassified—remains intact under Executive Order 13,526.221 The need to preserve indications of the President’s opinion on matters of foreign affairs and national security as the President sees fit likely trumps the value of general transparency.222 FIRRMA makes clear that even in successful cases, only the judge will have access to privileged information.223 Section 1715 allows the D.C. Circuit Court of Appeals to consider classified or otherwise confidential evidence on the condition that review occurs on an ex parte basis and in camera.224 Delegating CFIUS cases to this particular court makes sense because some judges on this circuit have experience sitting on the Foreign Intelligence Surveillance Court of Review which already hears cases involving information that is sensitive to national security.225 Nevertheless, an adequate forum does not negate the need for parties to be afforded the chance to be granted actual relief or at minimum, receive some form of transparency. In reality, neither of these needs are met by FIRRMA’s superficial attempt to increase judicial reviewability and transparency for parties. Aside from the specified forum, FIRRMA may have judicial implications from the addition of mandatory declarations. Two excerpts from the Ralls Corp opinion give an indication as to how the Judiciary will likely interpret the change in mandatory filing and potential use of executive privilege to maintain the secrecy of the review process. When the court decided Ralls Corp, it differentiated the case based on the voluntary choice to file notice with CFIUS by companies involved in the transaction.226 The court stated that failure to seek pre-approval did not work as waiver “when the regulatory scheme expressly contemplates that a party to a covered transaction may request approval—if the party decides to submit a voluntary notice at all—either before or after the transaction is completed.”227 The court drew a distinction from the optional nature of filing under FINSA. This permits the assumption that the shift to mandatory filings under FIRRMA could reopen the courts to evaluate Fifth Amendment Due Process implications. Furthermore, Ralls Corp did not fully deliberate the issue of executive privilege.228 It remains undetermined whether executive privilege, by either the executive communications prong or the deliberative process prong, will successfully shield disclosure of even unclassified documents considered.229 Some scholars called for reform after the Ralls Corp decision, arguing that only the Committee’s action, as an agency, should be subject to procedural review like in the cases of Ralpho and Ungar on which the Ralls Corp court relied.230 This suggestion ignores the design of CFIUS which intentionally blurs the line between executive agency and executive office; however, under the new FIRRMA regulation, the agency side of CFIUS gains significant power that could render this critique more applicable.231 D. Conclusion Though the power of CFIUS may be better utilized under FIRRMA, the issue of efficient use of this power remains unrealized. Historically, the parties involved withdraw almost half of the transactions CFIUS investigated rather than waiting for a potentially negative determination.232 The significant increase in the number of covered transactions will magnify this effect and lead to unintentional overdeterrence. The loss of economically beneficial transactions that would not have posed a threat to national security will ripple through the U.S. economy, impacting research and development, employment, and general economic stability. Additionally, FIRRMA leaves open the problematic “greenfield” investment loophole, which could potentially allow foreign investors to exploit the intellectual expertise on which the United States depends. Proposed Solution To successfully navigate the modern battleground of the global marketplace, U.S. oversight regulations must strategically address the nation’s intertwined economic and national security objectives. While FIRRMA addresses several leading concerns of today, it expands CFIUS to a point of excess and will not be able to efficiently achieve its goals. CFIUS should be respected as a pivotal element imbedded in a larger, wholistic strategy rather than as the sole gatekeeper watching for a range of problematic commerce. CFIUS should be expanded by increasing resources needed to handle an already large volume of cases. But even with an increased budget to expand, a new and improved CFIUS is only part of a larger regulatory structure needed to address the complex balance between economically beneficial but tactically concerning foreign investment in U.S. technology, real estate, and infrastructure.233

## Adv 3 - Competitiveness

### Kava

#### Expanding extraterritorial applications causes foreign nations to create *blocking statutes* – multiple turns case warrants

Kava 19 (Samuel Kava, University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business, 2019, “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity” University of Maryland Carey School of Law, Journal of Business and Technology Law, Volume 15, Issue 1, Article 5, pages 157-159 <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1311&context=jbtl>) MULCH

Before the FTAIA was enacted, in 1982, many of the United States’ closest allies were disgruntled by the U.S. courts’ expansive extraterritorial application of the Sherman Anti-Trust Act.152 These nations confided in the territorial principle, and believed it “axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack.”153 The United Kingdom, one of the most outspoken allies against the United States’ “attempt[] to impose [its] domestic laws on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States,” viewed the extraterritorial application of the Sherman Anti-Trust Act as ironic given the fact “the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially.”154 Thus, in an attempt to “protect their nationals from criminal [and civil] proceedings in foreign courts where the claims to jurisdiction [were] excessive and constitute[d] an invasion of sovereignty,” foreign nations enacted blocking statutes to resist the extraterritorial application of the Sherman Act.155

The blocking statutes of each nation varied, but all served to “block the discovery of documents located in their countries and bar the enforcement of foreign judgements.”156 The United Kingdom achieved these goals with the Protection of Trading Interests Act, France with the French Blocking Law, Canada with the Foreign Extraterritorial Measures Act, and Australia with the Foreign Proceedings Act.157 The conflicting laws between the United States and its foreign counterparts created tremendous uncertainty regarding what nation’s laws would be applied in the event of a cross-border dispute. According to Nuno Limáo and Giovanni Maggi, economists from the University of Maryland and Yale University, “as the world becomes more integrated, the gains from decreasing trade-policy uncertainty should tend to become more important relative to the gains from reducing the levels of trade barriers.”158

Essentially, for trade to prosper, it is more important to provide producers and consumers with predictability and certainty (regarding the rule of law) rather than enacting laws that focus on free trade economics. Accordingly, it is in the best interest of governments to focus on unifying its laws before negotiating for the elimination of tariffs or quotas. This is not to say that eliminating trade barriers is not vital to the health of the economy—in fact, tariffs, quotas, and other trade barriers are proven to adversely affect all parties involved in the chain of distribution—however, it is more important to unify laws before focusing on the elimination of any trade barriers.159

As mentioned in Part I.C., the complaints of U.S. exporters and foreign governments were heard, and the United States Congress enacted the FTAIA “to address the concerns of foreign governments that the effects test established in the Alcoa case had not made clear the magnitude of the U.S. effects required to support a claim under the Sherman Act.”160 Thus, the FTAIA was implemented to bring certainty to consumers and producers by requiring that “conduct must have a ‘direct, substantial, and reasonably foreseeable effect’” for the Sherman Anti-Trust Act to apply extraterritorially.161 This language provided the foreign community with temporary relief, and gave producers and consumers the certainty and predictability needed to establish confidence in the markets and continue trading.

However, since the passage of the FTAIA in 1982, the world has witnessed a remarkable increase in globalization, such that most conduct that takes place today has a “direct, substantial, and reasonably foreseeable effect” 162 on the U.S. economy. Epitomizing the obscureness of the FTAIA, is the fact that U.S. enforcement agencies—i.e. the U.S. Department of Justice and the Federal Trade Commission—have taken an aggressive approach to pursuing international antitrust claims. In 2017, the U.S. Department of Justice (“DOJ”) and Federal Trade Commission (“FTC”) published the International Guidelines—a publication “explaining how the agencies intend to enforce U.S. antitrust laws against conduct occurring outside the United States.”163 The International Guidelines have taken the broadest approach in determining if conduct is “direct”—finding if there is a “reasonably proximate causal nexus between the conduct and the effect” conduct is “direct”—and the narrowest view that international comity bars enforcement of U.S. antitrust laws only when it is impossible for the actor to comply with both U.S. law and its foreign nation’s law.164 Thus, because the FTAIA has become ineffective and there is a risk of further expansion of the extraterritorial application of the Sherman Anti-Trust Act with Apple v. Pepper, foreign nations will almost certainly strive to adopt modern and effective blocking statutes. These blocking statutes will revitalize uncertainty in the markets, and the global economy will be adversely affected.

In addition, because our world is more integrated, compared to the time when the FTAIA was implemented, the adverse economic effects may be worse if foreign nations pursue modern blocking statutes. To hedge against judicial uncertainty, corporations will likely react by hiring more robust legal teams. By re-allocating money to legal costs, with the hopes of avoiding potential litigation and ensuring compliance with all nations’ laws, corporations would have foregone the opportunity to spend time and money on: (1) scaling its current line of products (which would decrease the price of goods for consumers), (2) enhancing the capabilities of its current line of products (which improve consumer capabilities and increase corporate profits), or (3) creating new and innovative products (which would benefit both consumers and producers). Thus, because corporations would be forced to spend more resources on avoiding litigation rather than research and development with the new blocking statutes, consumers, producers, distributors, and the economy as a whole will be adversely affected.

Overall, there is a significant risk that foreign nations will look towards blocking statutes to limit the extraterritorial application of the Act. The conflicting laws of the United States and international community will lead to judicial uncertainty, which will have an adverse impact on the global economy. Businesses will spend more time and money to avoid disputes; thus, undermining corporate profits, a customer’s ability to purchase low cost goods, and the overall health of the global economy. The only certainty is that trade will slow down as a result of trade policy uncertainty. To avoid these adverse economic effects, it would be advantageous for the United States Congress to amend the FTAIA in a way that limits the effects of the extraterritorial application of the Sherman Anti-Trust Act. Specifically, Congress should limit the effects of the extraterritorial application of the Sherman Anti-Trust Act by expressly providing courts with a robust international comity analysis.

### 1NC---AT: Competitiveness !

#### U.S. competitiveness is high and resilient

Rodriguez 16 (Michelle Drew, Michelle leads many of Deloitte’s Manufacturing Competitiveness research efforts as part of her role as the Manufacturing Leader for Deloitte’s Center for Industry Insights. She is an accomplished professional with 15 years of strategic and operational experience, having worked directly in the automotive industry as well as currently serving as an advisor to global manufacturing executives. She and her team have worked on a number of efforts that explored the future trends impacting the manufacturing industry, from the boardroom to the shop floor. She has most recently authored multiple research studies on the topic of manufacturing. The foundation of the research Michelle leads is based on dozens of interviews with CEOs, CTOs, governmental leaders, university presidents, national laboratory leaders, and labor union leaders as well as collaboration with organizations such as World Economic Forum, Council on Competitiveness, NAM, and The Manufacturing Institute. She has a MBA from the University of Michigan (Ross School of Business) and also holds a Bachelor of Science in Mechanical Engineering from the University of Wisconsin. “Innovation drives competitiveness. But what drives innovation?” 7/25/16 <https://innovation-in-manufacturing.deloitte.com/2016/07/25/innovation-drives-competitiveness-but-what-drives-innovation/>)

Research shows advanced manufacturing is more essential than ever to economic competitiveness and prosperity. But what is involved in driving, sustaining, and applying the innovation that makes a company or country a leader in advanced manufacturing? In this post, I’ll explore the drivers that make the US a leader in innovation. Research and development (R&D) certainly plays a role, but the real key may be an intangible one: the innovation ecosystem. The US innovation ecosystem has evolved significantly over the last century, transitioning from business monopolies dominating R&D early last century, assertive government sponsorship mid-century, to the current environment, within a globally connected world in which small and big businesses collaborate with universities, venture capitalists, and research institutions to drive the innovation ecosystem. Meanwhile, the technological focus of R&D has followed a similar arc, shifting from the creation of physical to digital products, to the more recent formation of new business models that combine the physical and digital worlds to create and capture new forms of value. With capital, intellectual property, and talent flowing across borders with limited constraints, the United States faces fundamental questions of great importance to the future of its innovation ecosystem: How can it best cultivate the potential of advanced technologies to spur competitiveness? Can the United States continue to lead given the research spend and talent within other nations? No one entity houses all the brightest people or best ideas – the answer lies with looking outside your traditional walls. Insights from our recent Advanced Technologies Initiative: Manufacturing and Innovation study indicated that, when it comes to tangible factors such as R&D spend, **the U**nited **S**tates **is a clear leader**. We spend more on R&D in raw dollars than any other nation.2 We account for about one-third of the globe’s R&D spending. In comparison, the next-largest share is China’s, at less than one-quarter of the global total. The other eight in the top 10 barely surpass the US share when all combined. This strong set of R&D capabilities reaches across many industries. In a recent global study3 that assessed R&D leadership in 10 top sectors, the United States was ranked number one for seven of those 10 sectors. But we may not stay in the lead for long. Other countries are ramping up their spending. Some with far smaller R&D footprints—like Japan and South Korea—already outpace us in two measures of R&D intensity: spend as a percentage of GDP and researchers per million inhabitants. As the graphic below shows, from 2000 through 2013, South Korea, China, and Taiwan dramatically expanded their R&D intensity in both respects, while the United States made little change over the same period. And what about the US’s global lead in raw-dollar R&D spending? Experts predict China is on a pace to pass us by 2019.4 China already focuses more of its R&D on commercializing new technologies, while the US focuses a significant core on basic and applied research.5 The “secret sauce” of innovation R&D spend alone isn’t a defensible advantage for the US. Other countries can—and do—increase their investments. And someday in the not too distant future they may very well surpass us. **Does that mean we’ll lose our leadership? No.** The **enduring strength of US innovation**, or of any nation’s capacity to invent, is more complicated than the number of dollars spent on R&D alone. What matters is the innovation ecosystem–the complex collaboration between private business, government, academia, finance, independent research, and other functions to bring new products and services to market. An effective innovation ecosystem marshals top talent, allows ideas to flow, and lowers barriers to breakthroughs. The US’ entrepreneurial spirit and substantial funding from venture capital firms are **huge competitive advantages and key differentiators** for the country. It remains the center for “disruptive innovation” thanks to its research infrastructure and low barriers to entrepreneurs and start-ups. It’s also **more resilient with the sum being greater than the** individual **parts.** That’s one of the hidden strengths of what the US brings to the challenge: Key stakeholders within our ecosystem have evolved over time to become less siloed and more collaborative. With the increasing pace of digitalization across the manufacturing industry, its innovation ecosystem has become a more closely connected system with stronger linkages between government, small business, big business, universities, venture capitalists, and research institutions that leverage and benefit from the deeper knowledge and connectivity between each other. What’s next? The US innovation ecosystem must continue to evolve to maintain our competitive position. To stay ahead, key players in the ecosystem should regularly analyze our relative position within the global innovation environment, identify challenges, and capitalize on our strengths. For example, the US is a pioneer in basic and applied research. That’s long been a strength. But spending in these areas has stagnated over the last decade and the government contribution has shrunk as a percentage of the overall federal budget. This puts research performed at government-sponsored institutions at potential risk. Executives indicated that as basic and early applied research takes more time to deliver results in terms of tangible products and technologies, and how/when/where the learnings will be precisely applied aren’t known, it thereby makes it more difficult for shorter term sector specific businesses to nurture it properly. To keep our competitive edge, the government needs to maintain investment levels in the basic and early applied research to ensure a strong foundation for future success. While many other economies across the globe have increased their government R&D support, how should the innovation ecosystem respond? We need to focus on building efficient and effective collaboration and tech transfer mechanisms between basic and applied research as well as through to scale-up commercialization. The health, adaptability, and success of a nation’s innovation ecosystem ultimately determines its competitiveness. When the ecosystem works, **there is a continuous and self-reinforcing cycle** in which breakthroughs bring new technologies and products to market, sales and profits increase, and companies invest more in R&D. Our nation’s success hinges on the ability of industry, government, and research labs to work together and engage in ongoing dialogue about creating an environment in the US that continues to promote competitive R&D work and innovations in advanced manufacturing.

### 1NC---AT: Heg !

#### China can’t challenge---US heg is locked-in.

---China’s internal security costs and wasteful growth approach mean the US is comparatively stronger

---America per capita GDP is higher, dollar heg, allies, and soft power lock-in heg

Brands 12-9 (Hal Brands, Distinguished Professor at Johns Hopkins University’s School of Advanced International Studies and scholar at the American Enterprise Institute, “China's Global Power Tops the U.S.? New Measures Say No,” 12/09/20, <https://www.bloomberg.com/amp/opinion/articles/2020-12-10/china-s-global-power-tops-the-u-s-new-measures-say-no?srnd=opinion&sref=nmVx3tQ5&__twitter_impression=true>, TM)

Ever since the U.S. reached the pinnacle of global power after World War II, Americans have worried it wouldn’t remain there. Waves of “declinism” rolled across the country after Sputnik in the late 1950s, the Vietnam War, the oil shocks of the 1970s, the rise of Japan in the 1980s, and the Iraq War and the global financial crisis of the 2000s. Now, amid a global pandemic and at the onset of a long struggle with China, the question of American decline has taken on renewed urgency. The trouble with these debates is that power is as elusive as it is essential: It can be devilishly hard to measure outside of major war. (In war, it’s easy: Who won?) Recently, though, several innovative studies have sharpened our understanding of what power is and how to measure it — studies that are mostly, but not entirely, reassuring for a status-obsessed superpower. Traditionally, measures of power focused on attributes such as population, energy consumption and production of steel or other indicators of industrial strength. In the information age, these indices tell us relatively little about whether a country can get its way in world affairs. It is still common, though, to assess power through blunt measures like gross domestic product or military spending. Analysts who argue that Beijing is overtaking the U.S. habitually note that China’s GDP may soon surpass America’s. But GDP is a snapshot of activity rather than a measure of overall wealth. Some countries that spend massively on military power, such as Saudi Arabia, are quite useless in projecting it. So how can we determine the balance of advantage in a long rivalry? The groundbreaking academic work is giving us better answers. The first category focuses on refining our grasp of economic and military might. Michael Beckley of the American Enterprise Institute (where I am also a fellow) has developed a model that measures net power rather than gross power by accounting for things such as security costs (“the price a government pays to police and protect its citizens”) and production costs (how much it costs, in material and environmental degradation, to build that coal power plant). He finds, not surprisingly, that the U.S. fares far better than China, an authoritarian state with vast internal security costs and a prodigiously wasteful approach to stimulating growth. Similarly, it is critical that American per capita GDP dwarfs China’s, because that means the U.S. has more wealth left over, after it feeds its population, to pursue global influence. Other work has better accounted for the way wealth accrues over time, and found that the U.S. will still have far more overall economic power than China even after China’s GDP eclipses America’s. The second category better captures the reality of “network power.” In a landmark paper published in 2019, Abraham Newman of Georgetown University and Henry Farrell, my colleague at the Johns Hopkins School of Advanced International Studies, argue that the centrality of the dollar to international financial networks — which persists, despite decades of handwringing about its decline — gives the U.S. outsized coercive leverage. Scholars have also affirmed something that policymakers have long understood: America punches far above its own weight in global affairs, because of the network of military, economic and diplomatic partners it leads. China has nothing equivalent. The third category accounts for less tangible forms of power. For decades, analysts have grasped that soft power — the degree of admiration and emulation a country inspires — matters enormously. An intriguing study by Ted Hopf of the National University of Singapore, Bentley Allan of Johns Hopkins and Srdjan Vucetic of the University of Ottawa demonstrates that, even though America’s global favorability ratings have plummeted under President Donald Trump, there remains strong global support for democracy and free-market economic policies. That’s a body blow for an authoritarian, mercantilist China, which, the authors predict, “is unlikely to become the hegemon in the near term.” It also helps explain why European states are systematically turning away from Beijing even amid enormous turbulence in their relations with the U.S.

## Adv 1 - MMAC

### Biden Solves

#### Biden solves five eyes or alt causes

MSU = Green

Zheng ’21 (Sarah Zheng, Sarah Zheng joined the Post as a reporter in 2016. She graduated from Tufts University with a degree in international relations and film and media studies. She reports on China's foreign policy, “Are the Five Eyes nations banding together in united front against China?”, <https://www.scmp.com/news/china/diplomacy/article/3135913/are-five-eyes-nations-banding-together-united-front-against>, June 3, 2021)

For the last seven decades the network has been an intelligence platform for the US, Britain, Canada, Australia and New Zealand. But a common message on Hong Kong suggests its remit could become broader. It’s the oldest intelligence network in the world, and for more than seven decades the members of the Five Eyes – the United States, Britain, Canada, Australia and New Zealand – have exchanged surveillance information. The grouping grew out of the aftermath of World War II and continued through the Cold War, swapping classified data on the activities and interference by other countries. For that time, the focus was on intelligence but then last year, that appeared to change, with all five members issuing a statement on Beijing’s imposition of a national security law in Hong Kong and the disqualification of legislative candidates in the former British colony. This time the focus was squarely on China, shifting from more private intelligence sharing to a more public stance on policy towards Beijing. Besides Hong Kong, the five have also shared concerns over the security of 5G technology from the Chinese telecoms giant Huawei. Even until very recently, the Five Eyes was still outwardly concentrating on security, with ministers from each country meeting yearly since 2013 to collaborate on shared national security concerns such as access to end-to-end encrypted apps to act against illegal online activities. The focus on China became clearer last year, as Beijing’s political crackdown in Hong Kong intensified. Last summer, British Foreign Secretary Dominic Raab said he had spoken to his Five Eyes counterparts about “burden sharing if we see a mass exodus from Hong Kong” and shared concerns about a national security law Beijing had imposed on the former British colony. In May, the US, Canada, Britain and Australia released joint statements raising concerns about the impending national security law while New Zealand signed on after the legislation came into effect. Five Eyes: why New Zealand wants to go its own, quieter way on China 1 Jun 2021 All five countries also suspended their extradition treaties with Hong Kong after the enactment of the national security law. Canadian Industry Minister Francois-Philippe Champagne said in early April that “Western democracy … is having a moment”. “That’s why I feel that countries who share the same values and principles are keen to work together,” Champagne told Bloomberg. In Beijing it was confirmation that the group was carrying out a joint strategy to contain its rise, as the rift between China and the West deepens. Beijing fears the spy alliance could become a multilateral mechanism to coordinate Western policy on China. Canadian Industry Minister Francois-Philippe Champagne says nations with the same values and principles “are keen to work together”. Photo: Barcroft Media via Getty Images Canadian Industry Minister Francois-Philippe Champagne says nations with the same values and principles “are keen to work together”. Photo: Barcroft Media via Getty Images Researchers from Renmin University in Beijing argued in a commentary last August that the Five Eyes had moved from “operating in a secret and low-profile manner” to openly becoming “another major political alliance for the US to contain China”, shifting its target from the Soviet Union to terrorism to China under former US president Donald Trump. “The coordination mechanism is no longer limited to intelligence sharing and cooperation but is seeking to unite the Five Eyes countries’ stances and policies on Huawei’s 5G technology, Hong Kong’s national security law, the Indo-Pacific strategy,” the researchers said. “We cannot rule out the possibility that the Five Eyes alliance will be elevated to become a comprehensive political and security alliance, and even develop into an information industry and economic alliance.” Why is the Five Eyes intelligence alliance in China’s cross hairs? 20 Jun 2020 In response to Champagne’s comments, Chinese foreign ministry spokeswoman Hua Chunying said it did not make sense for the Five Eyes to unite to deal with China since the United Nations had more than 190 members, and that countries should not seek to “form enclosed small cliques with ideology as the yardstick”. Ministry spokesman Zhao Lijian warned in November that “no matter how many eyes they have, five or 10 or whatever”, anyone who dared to undermine China’s interests should “be careful not to get poked in the eye”. Beijing says ‘Five Eyes’ allies risk having ‘eyes poked out’ for meddling in Hong Kong affairs Srdjan Vucetic, an assistant professor of international relations at the University of Ottawa who has researched the Five Eyes, said the intelligence grouping was “acting in unison more than ever before” on foreign policy, in part due to international collaboration between sub-state intelligence and security agencies and the changing structure of international politics. “This compels foreign ministers of at least some Five Eye states to issue joint statements on Hong Kong, Nagorno-Karabakh [disputed region within Azerbaijan’s borders], global trade and other issues of common concern,” he said. “All of this builds on a long and mostly uninterrupted history of trust-building among state officials that goes back decades.” Despite the united front on Hong Kong, there have been key differences in how the five countries have approached China, including on the security threat from Chinese telecoms giant Huawei . Five Eyes group demands ways to access WhatsApp, other encrypted apps 12 Oct 2020 Canada, for instance, remains the only Five Eyes country to not have a formal policy banning Huawei’s 5G technology, despite calls to do so from officials such as Champagne. Australia and New Zealand expressed support for but did not follow Canada, Britain and the US in issuing sanctions on Chinese officials over Beijing’s repression of ethnic minorities in Xinjiang , in solidarity with European Union sanctions. And New Zealand Foreign Minister Nanaia Mahuta said in mid-April that while it was sometimes necessary to speak out on Hong Kong or Xinjiang , her country would do so “in association with others that share our views and sometimes we will act alone”. New Zealand also said in April that it was uncomfortable with the expanded remit of the Five Eyes. Randy Phillips, who spent 28 years with the US Central Intelligence Agency and served as the agency’s chief representative in China, said Beijing would be concerned if there was a “genuine multilateral defensive mechanism” to form a more effective counterbalance to China. But, he said, the Five Eyes was traditionally centred on intelligence sharing and counter-intelligence rather than on foreign policy or trade policy, and he expected cooperation between the grouping to remain limited to intelligence. “It’s been more driven by a reaction to what China has been doing in each of the countries involved as far as an intelligence threat – whether it’s cyber collection or human intelligence collection or signals intelligence – and comparing notes on what is being done to each of the partners,” said Phillips, who is now a partner at the business consultancy Mintz Group. “The China issues are really only one of a number of things there, and frankly, if China was not threatening, then there wouldn’t be an issue for Five Eyes to even worry about, but it is, so therefore they are.” Pang Zhongying, a specialist in international relations at Ocean University of China, said US President Joe Biden ’s administration had made it clear it sought to repair relationships with its allies, including those in the Five Eyes, to better deal with China. Beijing is concerned about a joint strategy to contain its rise. Photo: Xinhua Beijing is concerned about a joint strategy to contain its rise. Photo: Xinhua But Pang said the Five Eyes mechanism had changed since the Cold War era, and that its importance might now be more symbolic. “The Biden administration’s line of thinking is to support democratic countries and US allies to work together to confront China, connected by their shared values and interests,” he said. “But the world has changed drastically over the last four years. They are using existing tools in their toolbox, including the Five Eyes alliance, to deal with a world that has already changed.” The growing tensions between China and Western countries were “no doubt a big challenge”, the coordination between those nations would not be easy, he said. China policy will never divide us, Australia and New Zealand leaders say 4 Jun 2021 “I think the strategy that China employs is an old one – breaking them up individually,” he said. “Within the Five Eyes, they are coordinating, but to what extent they can coordinate is still a challenge. China can use the divergences in the coordination or cooperation between them to deal with them bilaterally.” There has also been interest from Japan in joining the anglophone alliance – with Japan’s former foreign and defence minister Taro Kono a vocal proponent – but observers have said this is unlikely in the short term. Michito Tsuruoka, an associate professor at Keio University and former senior research fellow at the Japanese defence minister’s National Institute for Defence Studies, said it was more likely for there to be informal cooperation, either in a “Five Plus One” format or greater intelligence-sharing cooperation between Japan and individual Five Eyes countries, such as the US. He argued that Tokyo would need to overcome various hurdles for membership, including revamping its intelligence gathering system, strengthening its counter-intelligence capabilities and ensuring it would be willing to take appropriate action on China, such as the joint Five Eyes statements’ on Hong Kong. “This is exactly the trickiest aspect and I am not quite optimistic,” Tsuruoka said. “Tokyo’s response to Hong Kong and Xinjiang have been quite muted compared to the US or UK.” Phillips, from the Mintz Group, said he expected friction between China and the West to only get worse, citing concerns over the volume of China’s intelligence collection and domestic influence attempts in Five Eyes countries. “China’s been very aggressive, particularly in the Xi Jinping era in collection and activities in each of the member countries,” he said. “**At the end of the day, it’s going to take some level of cooperation among countries outside of China to stand together in a sense to show that there are limits on what they will take, and China will have to decide what that means and how they want to react to that.”**

### Five Eyes

#### FISA surveillance is being decked by sunsets and BOTH recent AND future legislative curtailments

Kris 20 (David Kris, founder of Culper Partners LLC, assistant attorney general for national security, associate deputy attorney general, trial attorney at the Department of Justice, general counsel at Intellectual Ventures, and deputy general counsel and chief ethics and compliance officer at Time Warner, “What Hard National Security Choices Would a Biden Administration Face?” 5-27-2020, https://www.lawfareblog.com/what-hard-national-security-choices-would-biden-administration-face)

The second big FISA issue is legislative. Three provisions of FISA have sunsets—allowing roving wiretaps, lone wolf surveillance targets and compelled production of tangible things. The Justice Department says the lack of these authorities is limiting investigations. Either Congress will enact new legislation to reauthorize these three provisions or it will not. If a new law is passed, it will come with many new requirements and issues that will need to be addressed—perhaps more new requirements than are in this House bill, which was supported by a bipartisan group that included Attorney General William Barr and the leadership of the House Judiciary Committee. The Senate recently passed an amended version of the House bill, expanding the new requirements, which the Justice Department has strongly opposed on the grounds that it “would unacceptably degrade our ability to conduct surveillance of terrorists, spies and other national security threats”—and as of this writing the House has not acted on the Senate amendments. On May 26, the President tweeted, “I hope all Republican House Members vote NO on FISA until such time as our Country is able to determine how and why the greatest political, criminal, and subversive scandal in USA history took place!” If new legislation is not enacted, the lack of FISA authority will have ongoing investigative impact—particularly concerning tangible things—and will create pressure to use other authorities more aggressively, including national security letters and grand jury subpoenas, which could create other problems. For example, national security letters have, in the past, produced their own inspector general reports documenting misuse.

FISA has generated significant controversy with a decidedly partisan aspect. But the operational elements of reform may admit of relatively more continuity, rather than change, as between the Trump administration and a Biden administration. Members of Congress from both major political parties have raised concerns about FISA; the statute and its implementation are technical and complex, requiring attention to detail for meaningful solutions; and inaccuracy of the sort demonstrated by the FBI is not desired by senior national security officials of either political party. The partisan political aspects of FISA will likely endure, but nuts-and-bolts efforts at accuracy reform and related implementation could well be similar even if Biden wins the election.

#### Wrecks the Five Eyes – way more important than the plan

Nyst 14 (Carly Nyst, Head of International Advocacy at Privacy International, “The UN Privacy Report: Five Eyes Remains,” 8-13-2014, http://www.globalpolicyjournal.com/blog/13/08/2014/un-privacy-report-five-eyes-remains)

Carly Nyst discusses the recent report commissioned by the UN General Assembly in response to the political fallout of Edward Snowden’s revelations of American and British mass surveillance programmes. The report condemns modern surveillance techniques, particularly the secret Five Eyes spying alliance, which enables the US and UK to share vast amounts of surveillance with Australian, Canadian and New Zealand intelligence agencies. The United Nations delivered a searing rebuke to the digital mass surveillance practices of the United States in a report that systematically picks apart many of the legal justifications employed by government officials defending US and UK spying activities. The secret Five Eyes spying alliance, which enables the US and UK share vast amounts of surveillance with Australian, Canadian and New Zealand intelligence agencies, faces an existential threat if some of the conclusions in the report gain traction in national courts and legislatures. The report, commissioned by the UN General Assembly in response to the political fallout of Edward Snowden’s revelations of American and British mass surveillance programmes, is the strongest condemnation of modern surveillance techniques that any international authority has appropriated to date. The release of the report couldn’t be more timely; the US is in the midst of debating surveillance reforms, and in the UK, emergency legislation granting government new spying powers was rammed through Parliament in the same week the courts considered challenges to surveillance laws . A line in the sand For more than a year we have listened as officials in the US and UK defended the mass surveillance programs revealed by Edward Snowden. No one is reading your email, they’d say. No one is looking at the content of your communication. Don’t worry, it’s only the bad guys over there that we’re interested in. We are completely in compliance with international law. Navi Pillay, the UN High Commissioner of Human Rights, disagrees. She has issued a salvo of attacks on the legal excuses advanced by States that have sought to justify bulk collection under international law. Even if the government isn’t actually reading emails, they are tampering with individuals’ privacy. The very existence of a bulk collection program, such PRISM in the United States or the United Kingdom’s TEMPORA program, fundamentally interferes with privacy. Even where bulk collection programs serve a legitimate aim and have been approved through clear legal framework, they may still be unlawful because of the disproportionate impact of collecting metadata upon privacy rights. And, perhaps most significantly, laws which discriminate between the protections given to US and non-US persons have been shot down. Where the US interferes with communications infrastructure, by tapping cables or demanding access to data held by US internet services, they are obliged to consider the human rights of any person whose privacy they interfere with, and cannot discriminate against foreigners on the basis of their nationality or location–counter to the entire premise upon which FISA is based. Taken to its logical conclusion, this stance may spell the end of the carefully crafted legal loop-holes that the NSA relies on to maintain foreign surveillance activities. An end to unaccountable intelligence-sharing? The report also creates an existential crisis for intelligence-sharing arrangements, such as the Five Eyes alliance of the US, UK, Canada, Australia and New Zealand. In providing some of the most robust analysis by any authority to date on the relationship between foreign intelligence and human rights, Ms Pillay suggests that any effort by governments to coordinate surveillance practices in order to 'outflank the protection provided by domestic legal regimes' is unlawful. As a British court heard last week in a case against UK foreign intelligence agency GCHQ, this is precisely the purpose of the Five Eyes arrangement. There is no clear and accessible legal regime that specifies the circumstances in which, Five Eyes authorities can request access to signals intelligence from, or provide such intelligence, to another Five Eyes authority. Each of the Five Eyes states have broad, vague domestic laws that purport to warrant the sharing of and access to shared signal intelligence, but fail to set out minimum safeguards or provide details of or restrictions upon the nature of intelligence sharing. Moreover, the domestic legal frameworks implementing the obligations created by the Five Eyes agreement are carefully constructed to provide differing levels of protections for internal versus external communications, or those relating to nationals versus non-nationals. These frameworks attempt to circumvent national constitutional or human rights protections governing interferences with the right to privacy of communications that, states contend, apply only to nationals or those within their territorial jurisdiction. In the UK, the Intelligence and Security Committee–in charge of overseeing the actions of the UK intelligence agencies, including GCHQ–responded to the Snowden leaks remarking 'It has been alleged that GCHQ circumvented UK law by using the NSA’s PRISM programme to access the content of private communications […] and we are satisfied that they conformed with GCHQ’s statutory duties. The legal authority for this is contained in the Intelligence Services Act 1994.' Yet the chair of the ISC has in fact admitted to confusion about whether 'if British intelligence agencies want to seek to know the content of emails can they get round the normal law in the UK by simply asking an American agencies to provide that information?' When the head of the comilmittee charged with overseeing the lawfulness of the actions of intelligence services is unsure as to whether such agencies have acted lawfully, there is plainly a serious dearth in the accessibility of law, calling into question the rule of law. The UN’s report also takes umbrage at the 'secret rules' and FISC-like 'secret judicial interpretations' of laws. Any legal framework that gives executive authorities­–such as security and intelligence services–excessive discretion will be unlawful under international law, according to the UN. It is difficult to imagine how the Five Eyes intelligence sharing arrangement could ever pass muster if this is the threshold. The original Five Eyes agreement demanded secrecy, stating 'it will be contrary to this agreement to reveal its existence to any third party unless otherwise agreed' resulting in modern day references to the existence of the agreement by the intelligence agencies remaining limited. The existence of the agreement was not acknowledged publicly until March 1999; it was not until 2010, that the US and UK declassified numerous documents, including memoranda and draft texts, relating to the creation of the agreement. Generally the Five Eyes States and their intelligence services have been far too slow in declassifying information that no longer needs to be secret, resulting in the absence of the arrangement on any government website until recently.

#### AND, Brexit and Wexit thump

Lo 21 (Alex Lo, former lecturer in journalism at the University of Hong Kong, South China Morning Post columnist covering major issues affecting Hong Kong and the rest of China, journalist for 25 years, “The coming collapse of the ‘Five Eyes’ club of nations,” South China Morning Post, 1-26-2021, <https://www.scmp.com/comment/opinion/article/3119362/coming-collapse-five-eyes-club-nations>)

Some foreign political observers have long predicted the coming collapse of China or at least the Chinese communist state, which, of course, would amount to the same thing.

But, in the current context of the rivalry between China and the West, we are much more likely to see the break-up of some members of the so-called Five Eyes spying club of English-speaking nations: the United Kingdom, the United States and Canada.

Of the three, the UK is in the most obvious danger, thanks to its “successful” Brexit. In new polls conducted by The Sunday Times of Wales, Northern Ireland, Scotland and England, secessionist sentiments run high.

In Scotland, 49 per cent support independence compared to 44 per cent against – a margin of 52 per cent to 48 per cent if the undecided are excluded.

Scottish First Minister Nicola Sturgeon, of the nationalist Scottish National Party, is fighting for a referendum on independence regardless of Westminster’s consent.

The same polls reveal that a majority of people in the UK, regardless of their own political preferences, believe Scotland will become independent within the next decade.

In Northern Ireland, 42 per cent favour unification with the rest of the Irish nation, while 47 per cent prefer to stay in the Union. However, 51 per cent support a referendum on a united Ireland within the next five years, compared to 44 per cent against. Both Northern Ireland and Scotland see Brexit as England’s wilful negation of their clear preference to stay in the European Union.

The break-up of the UK will, of course, have enormous consequences not just for its people, but for the world at large. Without going into such complicated issues as global security, economy and cultural influence, just imagine the proud Union flag, which represents the four nations. It will have to be dropped and replaced.

When people talk about Canada and separatism, they usually think of Quebec. The reality today is rather different. Most likely, if federalism were to fall apart, it would be from the western provinces. “Wexit”, as it is sometimes called, will be led by resource-rich Alberta and breadbasket Saskatchewan. However, they may well be followed by Quebec and the First Nations of natives.

An October 2019 survey by Ipsos, the market research and public opinion specialist, found that a third of Albertans think their province would be better off separated, up from 25 per cent from the previous year. That is about the same as the 26 per cent and 27 per cent who back separation respectively in francophone Quebec and Saskatchewan.

Quite simply, Alberta’s economy depends on oil and natural gas production; it also sends more money to Ottawa than it receives in terms of tax transfers.

To add insult to injury, many Albertans think Ottawa wants to kill their energy industry, especially with the environment-friendly policy of the Liberal government under Prime Minister Justin Trudeau. Last week’s statement by Canada’s energy minister, Seamus O’Regan, has been especially infuriating.

He said Canada must “respect” US President Joe Biden’s decision to kill the controversial Keystone XL pipeline project and rejected demands from provincial politicians to pursue punitive measures against the United States.

“It was an important campaign promise from candidate Biden. It’s the one he kept as President Biden,” he said.

The perception is that Ottawa cares more about Washington than one of its most important revenue-generating provinces.

Indeed, the federal government has been ambivalent about the Keystone XL project, which aims to transport a massive amount of tar sands oil from Alberta to Texas, the dirtiest type of fossil fuel because of the technical difficulties in extraction and processing.

Trudeau had run on a platform of environmental protection.

According to the US World Population Review in 2019, Alberta produces a shocking 62 tonnes of carbon dioxide equivalent per person per year, compared to about 17 tonnes per person by another giant oil producer, Saudi Arabia. But if your entire livelihood depends on oil sands, you may not care too much about global warming.

As a voter, though, you would care that more of your taxes go to the federal government than benefits you receive from it.

The latter point, of course, is not so simple. As Donald Savoie, an academic at the Universite de Moncton, has argued in Democracy in Canada: The Disintegration of Our Institutions, the province actually received a greater bang for its buck from federal spending than would be revealed by a simple accounting of the transfers of payments and benefits. But in politics, perception is all.

National break-ups don’t always have to be violent, though they often are. In the 1990s, Yugoslavia collapsed into a savage civil war that killed more than 150,000 people. However, Czechoslovakia divorced peacefully following referendums. If break-ups were to happen, the UK and Canada may end up closer to the Czechoslovakia scenario.

But there is no guarantee, given the fault lines between the Catholics and Protestants, and the long-standing antagonism between former members of the Irish Republican Army and the British establishment, in Northern Ireland.

### China

#### No risk of US – China war – diplomatic ties, economic interdependence, geography, nuclear postures, balancing powers, no ideological conflict – any crisis won’t escalate

Shifrinson, 19 – Joshua Shifrinson (Assistant professor of international relations at Boston University, “The ‘new Cold War’ with China is way overblown. Here’s why,” <https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm_term=.2f92e43bb9f3>)

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990. But such concerns are overblown. Here are four big reasons why. 1. The historical backdrops of the two relationships are very different When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links. In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop. 2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons. Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics. Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert. As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds. 3. The Cold War had just two major powers The Cold War took place in a bipolar system, with the United States and Soviet Union uniquely powerful, compared with other nations. This dynamic often pushed the United States and the U.S.S.R. toward confrontation and contributed to more or less fixed alliances; moreover, it encouraged efforts to suppress prospective great powers, such as Germany. In 2019, it’s not at all clear we are back to bipolarity. Analysts remain divided over whether the U.S. unipolar era is waning (or is already over) — and, if so, whether we are heading for a new period of bipolarity, modern-day multipolarity or something else. Regardless, most analysts accept that other countries will play a central role in East Asian security affairs. Russia, for example, still benefits from legacy military investments, India is developing economically and militarily, and Japan is beginning to build highly capable military forces to complement its still-significant economic might. Even if these nations aren’t as powerful as the United States or China, their presence makes for more fluid diplomatic arrangements and more diffuse security concerns than during the U.S.-Soviet competition. The resulting security dynamics are therefore likely to look very different. 4. Ideology plays less of a role in U.S.-Chinese relations Many people see the Cold War as an ideological contest between U.S.-backed liberalism and Soviet-backed communism. But that’s not the whole story. The early 20th century saw liberalism, communism and fascism vie for ideological preeminence. With fascism defeated alongside Nazi Germany, the postwar stage was set for a struggle between communism and liberalism to reinforce the U.S.-Soviet contest. That each ideology claimed universal scope ensured that the ideologies served as rallying cries for Third World conflicts, which were subsequently associated with the U.S.-Soviet struggle. The respective “ideologies” of the United States and China do not favor this type of contest today. Indeed, analysts calling for a hard-line stance against China have faced difficulties even identifying a coherent Chinese ideological alternative. And while some researchers claim that a nascent ideological contest pitting an “autocratic” China against the “liberal” United States is emerging, this narrative ignores the political contests that shape Chinese politics (and have parallels in U.S. politics). Autocracies and democracies often cooperate. And on one important ideological issue — how they organize their economic lives — China and the United States have both embraced economic growth via trade, the private sector and semi-free markets. Likewise, while a clearer Chinese ideological “brand” may eventually emerge, it is unclear whether the ideology would claim universal applicability. This is not to deny that there are tensions between the United States and China. What we are seeing, however, is not a new cold war but a reversion to a pre-1945 form of great power politics. What changed? Put simply, the United States no longer enjoys preeminence as the only superpower, as it did in the immediate post-Cold War era. The ideological, historical and geopolitical differences between today and the Cold War years far outweigh the similarities. As David Edelstein notes, at times it’s hard to understand what the United States and China are competing over. If that’s true, then there’s reason to believe there are more nuanced ways of understanding the tensions — and options for managing great power politics — than a Cold War reboot.=

### Russia

#### No doomsday cyberattacks – last 25 years prove they don’t escalate and stay low level

Lewis 20 (senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies). Lewis, James. 2020. “Dismissing Cyber Catastrophe.” Center for Strategic & International Studies. August 17, 2020. https://www.csis.org/analysis/dismissing-cyber-catastrophe.

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack. To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge. It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted. More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are: Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals. There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.) No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare. State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war. This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation. The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability. One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1 This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often? Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer. The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

#### And no Russia war – disagreements remain limited

Weitz, 11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor 9/27/2011, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” [http://www.scribd.com/doc/66579517 /Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties](http://www.scribd.com/doc/66579517%20/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties))

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely **remain limited and compartmentalized. Russia and the West do not have fundamentally conflicting vital interests of the kind countries would go to war over.** And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

## Adv 2 - FTC

### 1NC---AT: Nuke Terror !

They can’t solve terrorism---their ev says they are irrational and inevitable, which means they’ll inevitably shift in response to the plan.

#### No nuke terror.

Mueller 20 (John Mueller, Adjunct Professor of Political Science, Senior Fellow @ the Cato Institute, Senior research scientist with the Mershon Center for International Security Studies @ Ohio State University, “Nuclear Alarmism: Proliferation and Terrorism,” 06/24/20, Cato Institute, <https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism>, TM)

Nuclear Terrorism Alarm about the possibility that small groups could set off nuclear weapons has been repeatedly raised at least since 1946, when atomic bomb maker J. Robert Oppenheimer contended that if three or four men could smuggle in units for an atomic bomb, they could “destroy New York.” Thirty years later, nuclear physicist Theodore Taylor explained “how comparatively easy it would be to steal nuclear material and step by step make it into a bomb.” At the time, he thought it variously already too late to “prevent the making of a few bombs, here and there, now and then,” or “in another ten or fifteen years, it will be too late.“31 Four decades after Taylor, we continue to wait for terrorists to carry out their “easy” task. In the wake of 9/11, concern about the atomic terrorist surged even though the attacks of that day used no special weapons. By 2003, United Nations Ambassador John Negroponte judged there to be “a high probability” that within two years al Qaeda would attempt an attack using a nuclear or other weapon of mass destruction. And it was in that spirit that in 2004, Graham Allison published a book relaying his “considered judgment” that “on the current path, a nuclear terrorist attack on America in the decade ahead is more likely than not.” He had presumably relied on the same inspirational mechanism in 1995 to predict that “in the absence of a determined program of action, we have every reason to anticipate acts of nuclear terrorism against American targets before this decade is out.“32 Allison has quite a bit of company in his perpetually alarming conclusions. According to Robert Gates, former secretary of defense, every senior government leader is kept awake at night by “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” And on April 11, 2010, President Barack Obama held the atomic terrorist to be “the single biggest threat to U.S. security.“33 However, thus far, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. That lack of action may be because, after a brief exploration of the possible routes, they — unlike generations of alarmists — have discovered that the tremendous effort required is scarcely likely to be successful.34 Obtaining a Finished Bomb: Assistance by a State One route a would‐​be atomic terrorist might take would be to receive or buy a bomb from a generous like‐​minded nuclear state for delivery abroad. That route is highly improbable, however, because there would be too much risk — even for a country led by extremists — that the ultimate source of the weapon would be discovered. As one prominent analyst, Matthew Bunn, puts it, “A dictator or oligarch bent on maintaining power is highly unlikely to take the immense risk of transferring such a devastating capability to terrorists they cannot control, given the ever‐​present possibility that the material would be traced back to its origin.” Important in this last consideration are deterrent safeguards afforded by “nuclear forensics,” which is the rapidly developing science (and art) of connecting nuclear materials to their sources even after a bomb has been exploded.35 Moreover, there is a very considerable danger to the donor that the bomb (and its source) would be discovered before delivery or that it would be exploded in a manner and on a target the donor would not approve of — including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence.36 In addition, almost no one would trust al Qaeda. As one observer has pointed out, the terrorist group’s explicit enemies list includes not only Christians and Jews but also all Middle Eastern regimes; Muslims who don’t share its views; most Western countries; the governments of Afghanistan, India, Pakistan, and Russia; most news organizations; the United Nations; and international nongovernmental organizations.37 Most of the time, it didn’t get along all that well even with its host in Afghanistan, the Taliban government.38 Stealing or Illicitly Purchasing a Bomb: Loose Nukes There has also been great worry about “loose nukes,” especially in postcommunist Russia — weapons, “suitcase bombs” in particular, that can be stolen or bought illicitly. A careful assessment conducted by the Center for Nonproliferation Studies has concluded that it is unlikely that any of those devices have been lost and that, regardless, their effectiveness would be very low or even nonexistent because they (like all nuclear weapons) require continual maintenance.39 Even some of those people most alarmed by the prospect of atomic terrorism have concluded, “It is probably true that there are no ‘loose nukes,’ transportable nuclear weapons missing from their proper storage locations and available for purchase in some way.“40 It might be added that Russia has an intense interest in controlling any weapons on its territory because it is likely to be a prime target of any illicit use by terrorist groups, particularly Chechen ones of course, with whom it has been waging a vicious on‐and‐off war for two decades. The government of Pakistan, which has been repeatedly threatened by terrorists, has a similar interest in controlling its nuclear weapons and material — and scientists. As noted by Stephen Younger, former head of nuclear weapons research and development at Los Alamos National Laboratory, “Regardless of what is reported in the news, all nuclear nations take the security of their weapons very seriously.“41 Even if a finished bomb were somehow lifted somewhere, the loss would soon be noted and a worldwide pursuit launched. Moreover, finished bombs are outfitted with devices designed to trigger a nonnuclear explosion that would destroy the bomb if it were tampered with. And there are other security techniques: bombs can be kept disassembled with the components stored in separate high‐security vaults, and security can be organized so that two people and multiple codes are required not only to use the bomb but also to store, maintain, and deploy it. If the terrorists seek to enlist (or force) the services of someone who already knows how to set off the bomb, they would find, as Younger stresses, that “only few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” Weapons designers know how a weapon works, he explains, but not the multiple types of signals necessary to set it off, and maintenance personnel are trained in only a limited set of functions.42 There could be dangers in the chaos that would emerge if a nuclear state were to fail, collapsing in full disarray — Pakistan is frequently brought up in this context and sometimes North Korea as well. However, even under those conditions, nuclear weapons would likely remain under heavy guard by people who know that a purloined bomb would most likely end up going off in their own territory; would still have locks (and in the case of Pakistan would be disassembled); and could probably be followed, located, and hunted down by an alarmed international community. The worst‐case scenario in that instance requires not only a failed state but also a considerable series of additional permissive conditions, including consistent (and perfect) insider complicity and a sequence of hasty, opportunistic decisions or developments that click flawlessly in a manner far more familiar to Hollywood scriptwriters than to people experienced with reality.43 Building a Bomb of One’s Own Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44 The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.“45 The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence. To begin with, now and likely for the foreseeable future, stateless groups are incapable of manufacturing the requisite weapons‐​grade uranium

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themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material by a state for the same reasons a state is unlikely to give them a workable bomb.46 Thus, they would need to steal or illicitly purchase the crucial material. A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49 It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50 If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51 Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53 Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54 Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals. The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off. The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud. The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

### 1NC---AT: BioD !

#### No impact to bio-d loss

Kareiva 12 (Peter Kareiva et. al, – Chief Scientist and Vice President of the Nature Conservancy, Michelle Marvier, Robert Lalasz, “Conservation in the Anthropocene Beyond Solitude and Fragility”, The Breakthrough, http://thebreakthrough.org/index.php/journal/past-issues/issue-2/conservation-in-the-anthropocene/)

2.

As conservation became a global enterprise in the 1970s and 1980s, the movement's justification for saving nature shifted from spiritual and aesthetic values to focus on biodiversity. Nature was described as primeval, fragile, and at risk of collapse from too much human use and abuse. And indeed, there are consequences when humans convert landscapes for mining, logging, intensive agriculture, and urban development and when key species or ecosystems are lost.

But ecologists and conservationists have grossly overstated the fragility of nature, frequently arguing that once an ecosystem is altered, it is gone forever. Some ecologists suggest that if a single species is lost, a whole ecosystem will be in danger of collapse, and that if too much biodiversity is lost, spaceship Earth will start to come apart. Everything, from the expansion of agriculture to rainforest destruction to changing waterways, has been painted as a threat to the delicate inner-workings of our planetary ecosystem.

The fragility trope dates back, at least, to Rachel Carson, who wrote plaintively in Silent Spring of the delicate web of life and warned that perturbing the intricate balance of nature could have disastrous consequences.22 Al Gore made a similar argument in his 1992 book, Earth in the Balance.23 And the 2005 Millennium Ecosystem Assessment warned darkly that, while the expansion of agriculture and other forms of development have been overwhelmingly positive for the world's poor, ecosystem degradation was simultaneously putting systems in jeopardy of collapse.24

The trouble for conservation is that the data simply do not support the idea of a fragile nature at risk of collapse. Ecologists now know that the disappearance of one species **does not** necessarily lead to the extinction of any others, much less all others in the same ecosystem. In many circumstances, the demise of formerly abundant species can be inconsequential to ecosystem function. The American chestnut, once a dominant tree in eastern North America, has been extinguished by a foreign disease, yet the forest ecosystem is surprisingly unaffected. The passenger pigeon, once so abundant that its flocks darkened the sky, went extinct, along with countless other species from the Steller's sea cow to the dodo, with no catastrophic or even measurable effects.

These stories of resilience are not isolated examples -- a thorough review of the scientific literature identified 240 studies of ecosystems following major disturbances such as deforestation, mining, oil spills, and other types  of pollution. The abundance of plant and animal species as well as other measures of ecosystem function recovered, at least partially, in 173 (72 percent) of these studies.25

While global forest cover is continuing to decline, it is rising in the Northern Hemisphere, where "nature" is returning to former agricultural lands.26 Something similar is likely to occur in the Southern Hemisphere, after poor countries achieve a similar level of economic development. A 2010 report concluded that rainforests that have grown back over abandoned agricultural land had 40 to 70 percent of the species of the original forests.27 Even Indonesian orangutans, which were widely thought to be able to survive only in pristine forests, have been found in surprising numbers in oil palm plantations and degraded lands.28

Nature is so resilient that it can recover rapidly from even the most powerful human disturbances. Around the Chernobyl nuclear facility, which melted down in 1986, wildlife is thriving, despite the high levels of radiation.29 In the Bikini Atoll, the site of multiple nuclear bomb tests, including the 1954 hydrogen bomb test that boiled the water in the area, the number of coral species has actually increased relative to before the explosions.30 More recently, the massive 2010 oil spill in the Gulf of Mexico was degraded and consumed by bacteria at a remarkably fast rate.31

Today, coyotes roam downtown Chicago, and peregrine falcons astonish San Franciscans as they sweep down skyscraper canyons to pick off pigeons for their next meal. As we destroy habitats, we create new ones: in the southwestern United States a rare and federally listed salamander species seems specialized to live in cattle tanks -- to date, it has been found in no other habitat.32 Books have been written about the collapse of cod in the Georges Bank, yet recent trawl data show the biomass of cod has recovered to precollapse levels.33 It's doubtful that books will be written about this cod recovery since it does not play well  to an audience somehow addicted to stories of collapse and environmental apocalypse.

Even that classic symbol of fragility -- the polar bear, seemingly stranded on a melting ice block -- may have a good chance of surviving global warming if the changing environment continues to increase the populations and northern ranges of harbor seals and harp seals. Polar bears evolved from brown bears 200,000 years ago during a cooling period in Earth's history, developing a highly specialized carnivorous diet focused on seals. Thus, the fate of polar bears depends on two opposing trends -- the decline of sea ice and the potential increase of energy-rich prey. The history of life on Earth is of species evolving to take advantage of new environments only to be at risk when the environment changes again.

The wilderness ideal presupposes that there are parts of the world untouched by humankind, but today it is impossible to find a place on Earth that is unmarked by human activity. The truth is humans have been impacting their natural environment for centuries. The wilderness so beloved by conservationists -- places "untrammeled by man"34 -- never existed, at least not in the last thousand years, and arguably even longer.

### 1NC---AT: Food Wars !

#### No impact

Rosegrant 13 – M ark W., Director of the Environment and Production Technology Division at the International Food Policy Research Institute, et al., 2013, “The Future of the Global Food Economy: Scenarios for Supply, Demand, and Prices,” in Food Security and Sociopolitical Stability, p. 39-40

The food price spikes in the late 2000s caught the world’s attention, particularly when sharp increases in food and fuel prices in 2008 coincided with street demonstrations and riots in many countries. For 2008 and the two preceding years, researchers identified a significant number of countries (totaling 54) with protests during what was called the global food crisis (Benson et al. 2008). Violent protests occurred in 21 countries, and nonviolent protests occurred in 44 countries. Both types of protest took place in 11 countries. In a separate analysis, developing countries with low government effectiveness experienced more food price protests between 2007 and 2008 than countries with high government effectiveness (World Bank 201la). Although the incidence of violent protests was much higher in countries with less capable governance, many factors could be causing or contributing to these protests, such as government response tactics, rather than the initial food price spike.

Data on food riots and food prices have tracked together in recent years. Agricultural commodity prices started strengthening in international markets in 2006. In the latter half of 2007, as prices continued to rise, two or fewer food price riots per month were recorded (based on World Food Programme data, as reported in Brinkman and Hendrix 2011). As prices peaked and remained high during mid-2008, the number of riots increased dramatically, with a cumulative total of 84 by August 2008. Subsequently, both prices and the monthly number of protests declined.

Several researchers have studied the connection between food price shocks and conflict, finding at least some relationship between food prices and conflict. According to Dell et al. (2008), higher food prices lead to income declines and an increase in political instability, but only for poor countries. Researchers also found a positive and significant relationship between weather shocks (affecting food availability, prices, and real income) and the probability of suffering government repression or a civil war (Besley and Persson 2009). Arezki and Bruckner (2011) evaluated a constructed food price index and political variables, including data on riots and anti-government demonstrations and measures of civil unrest. Using data from 61 countries over the period 1970 to 2007, they found a direct connection between food price shocks and an increased likelihood of civil conflict, including riots and demonstrations.

Other researchers have broadened the analysis by considering government responses or underlying policies that affect local prices, and consequently influence outcomes and the linkage between food price shocks and conflict. Carter and Bates (2012) evaluated data from 30 developing countries for the time period 1961 to 2001, concluding that when governments mitigate the impact of food price shocks on urban consumers, the apparent relationship between food price shocks and civil war disappears. Moreover, when the urban consumers can expect a favorable response, the protests only serve as a motivation for a policy response rather than as a prelude to something more serious, such as violent demonstrations or even civil war.

Many in the international development community see war and conflict as a development issue, with a war or conflict severely damaging the local economy, which in turn leads to forced migration and dislocation, and ultimately acute food insecurity. Brinkman and Hendrix (2011) ask if it could be the other way around, with food insecurity causing conflict. Their answer, based on a review of the literature, is "a highly qualified yes," especially for intrastate conflict. The primary reason is that insecurity itself heightens the risk of democratic breakdown and civil conflict. The linkage connecting food insecurity to conflict is contingent on levels of economic development (a stronger linkage for poorer countries), existing political institutions, and other factors. The researchers say establishing causation directly is elusive, considering a lack of evidence for explaining individual behavior. The debate over cause and effect is ongoing.

#### Global responses to food insecurity can effectively prevent conflict now

Emmy **Simmons 17**, nonresident senior adviser to the CSIS Global Food Security Project, independent consultant on international development issues with a focus on food, agriculture, and Africa, February 2017, “RECURRING STORMS: Food Insecurity, Political Instability, and Conflict,” http://reliefweb.int/sites/reliefweb.int/files/resources/170124\_Simmons\_RecurringStorms\_Web.pdf

Sharp rises in global food prices in 2007/08 **jolted global political leaders out of any complacency** they might have had regarding the future of food and agriculture. Street demonstrations and food riots broke out in more than 40 countries across the world, provoking unrest and violence in several places. The L’Aquila Food Security Initiative, launched by the G-8 and the G-20 in 2009, brought new funding and energy to the task of quelling the “perfect storm” of food insecurity set off by spiking global food and fuel prices, financial and commodity market turmoil, the competition of biofuel production, and adverse weather in key agricultural regions. The L’Aquila Food Security Initiative **successfully reversed** a decades-long decline in international support for agricultural development. To implement the L’Aquila Initiative, programs were put in place **across the developing world** to increase agricultural productivity, strengthen smallholder farmer linkages to commercial markets, and ensure that youth, women, and marginalized populations were full participants in the growth of the sector. But as this work went forward, new threats to sustainable food security became apparent. Changes in global weather patterns are now projected to have potentially devastating impacts on agriculture in the coming years and decades. The rising “double burden” of malnutrition already threatens to dampen global progress toward better health. Demographic change—a bulging population of youth in Africa and rapid urbanization—is creating opportunities for an economic growth spurt that will affect food demand and organized protests when food security is endangered. Food safety issues, economic and social inequities, and food price volatility are seen as persistent disrupters of food systems and food security. Outbreaks of civil unrest and violent conflict have deprived millions of reliable access to food and challenged their physical security and social cohesion. Whether these threats will combine to drive repeats of 2007/08’s “perfect storm” of food insecurity in the future is unknown. But it is predicted that, singly or together, they already pose critical risks—likely to erupt in “recurring storms”—somewhere around the globe. The L’Aquila Initiative was brought to a close in 2012. But in 2015, “ending hunger, achieving food security and improved nutrition, and promoting sustainable agriculture” was adopted as one of 17 Sustainable Development Goals (SDGs) to be accomplished by 2030. **Strong international collaboration** to build more productive and resilient households, nations, and food systems—to help them **withstand** the likely recurring storms of hunger, food insecurity, and agricultural market volatility—seems like the **obvious path forward**.

# BLOCK

# 2NC---NU R3

## CP – Adv

## CP – Section 5

### 2NC---O/V

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

#### First, Aff severs *“Law”*

#### We aren’t prohibiting or expanding anything (below);

#### But *if we were*, it’s NOT an expansion of the 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.

#### Second, Increase prohibition and expand scope---the conduct is already prohibited---that’s 1NC Khan that we’ll include for clarity.

**NOTE**: All highlighted portions (green and blue) of this card were read in the 1NC. The 1NC card made solvency and competition claims – and, to offer context, we’ve used blue highlighting to outline the parts of the ev that augment our perm/competition claims.

Kahn ‘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.

#### Theoretically, Section 5 could already challenge the practice outlined by the Aff.

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

#### The CP has an agency alter its enforcement discretion related to an existing statutory prohibition. That’s not an increase in prohibitions.

Kusserow ‘91

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

I. Background

A. The Medicare Anti-Kickback Statute

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

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

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

B. Public Law 100-93

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

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

C. Notice of Intent

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

D. Notice of Proposed Rulemaking

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

II. Summary of the Proposed Rule

A. Business Arrangements Not Exempt

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

B. Need for Continuing Guidance

Since there may be a need for the Department to respond to changes in health care delivery or business arrangements more quickly and informally than through the regulatory process to keep the industry abreast of our enforcement policy, the proposed rule invited public comment on how we can best achieve the dual goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments.

C. Notice to Beneficiaries

While we considered including in several of the proposed safe harbor provisions a requirement that a person notify each Medicare or Medicaid patient he or she refers to a related entity of the financial relationship that exists, we indicated that such notice requirements may be unduly burdensome compared with the potential benefits and, therefore, did not include the requirement in the safe harbors in the proposed regulation. Instead, we invited public comments on this issue.

D. Preferred Provider Organizations

We cited the increasing variety of arrangements among entities grouped under the generic headings "preferred provider organizations" (PPOs) or "managed care," and that unlike HMOs, there is often no single entity that is recognized as the "health care provider." The proposed regulations did not specifically delineate a safe harbor provision for these arrangements since we believed that one or more of the other proposed safe harbors would often cover relationships in preferred provider and managed care networks. We invited comments from the public, however, on the idea of adding additional safe harbors that would provide further protection to HMOs, PPOs, and other managed care plans.

E. Waiver of Coinsurance and Deductible Amounts for Inpatient Hospital Care

We noted that with the advent in 1983 of the prospective payment system for paying hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. We solicited comments on defining a safe harbor for waiving coinsurance and deductible amounts that would be limited to inpatient hospital care, be available to all Medicare beneficiaries without regard to diagnosis or length of stay, and assure that any costs to the hospital of waiving the coinsurance and deductible amounts would not be passed on to any Federal program as a bad debt or in any other way.

F. Proposed Safe Harbors

The regulation published on January 23, 1989, proposing to amend 42 CFR part 1001 by adding a new § 1001.952, set forth "safe harbors" in ten broad areas:

1. Investment Interests

To reflect the view that Congress did not intend to bar all investments by physicians in other health care entities to which they refer patients, a safe harbor provision was proposed for investment interests in large public corporations where such investments are available to the general public. This safe harbor described a minimum number of shareholders and a minimum number of assets the company must have in order to qualify under this provision

Safe harbors for limited and managing partnerships were considered under the proposed regulation, but were not included. These areas were discussed in the preamble of the proposed rule, and we specifically requested public comments on adopting these practices as safe harbors.

2. Space Rental

While many rental arrangements are legitimate, many situations exist where rental payments are simply a device used to mask illegal payments intended to induce referrals. Accordingly, a safe harbor provision was proposed for rental arrangements if: (a) Access to the space is for periodic intervals and such intervals are set in advance in the lease, rather than based on the number of referred patients; (b) the lease is for at least one year so it cannot be readjusted on too frequent a basis to reflect prior referrals; and (c) the charges reflect fair market value.

3. Equipment Rental

With the understanding that the payment for the use of diagnostic and other medical equipment may simply be a vehicle to provide reimbursement for referrals, a safe harbor was proposed for certain situations involving equipment rentals similar to those applied to real estate rentals cited above.

4. Personal Services and Management Contracts

While health care providers often have arrangements to perform services for each other on a mutually beneficial basis, some of these arrangements may vary the payment with the volume of referrals. The proposed regulation set forth a safe harbor provision for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met that limit the opportunity to provide financial incentives in exchange for referrals. This proposed provision required the services to be paid at fair market value, and was predicated on requirements similar to those set forth in the provisions for space and equipment rental.

5. Sale of Practice

Unlike the traditional sale of a practice by a retiring physician, a physician may sell, or appear to sell, a practice to a hospital while continuing to practice on its staff. A safe harbor provision was proposed for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in which he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals.

6. Referral Services

Professional societies and other consumer-oriented groups often operate referral services for a fee. Because such a service fee could be construed as a payment in order to obtain a referral, we concluded that it was appropriate to establish a specific safe harbor for this type of practice. In order to safeguard against abuse, however, the provision is only available when several standards are met.

7. Warranties

It is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. A safe harbor was proposed for such purposes.

8. Discounts

Safe harbors relating to discounts, employees and group purchasing organizations are specifically required by statute. The discount exception was intended to encourage price competition that benefits the Medicare and Medicaid programs. The proposed discount provision was limited in application to reductions in the amount a seller charges for a good or service to the buyer. The discount could take the form of a specified price break, or the inclusion of an extra quantity of the item purchased "at no extra charge." We did not propose to protect many kinds of marketing incentive programs such as cash rebates, free goods or services, redeemable coupons, or credits.

9. Employees

The proposed exception for employees permitted an employer to pay an employee in whatever manner he or she chose for having that employee assist in the solicitation of program business and applied only to bona fide employee- employer relationships.

10. Group Purchasing Organizations

The proposed group purchasing organization (GPO) exception was designed to apply to payments from vendors to entities authorized to act as a GPO for individuals or entities who are furnishing Medicare or Medicaid services. The proposed exception required a written agreement between the GPO and the individual or entity that specifies the amounts vendors will pay the GPO.

III. Response to Comments and Summary of Revisions

As indicated above, in response to the proposed rulemaking we received 754 public comments from various provider groups, medical facilities, professional and business organizations and associations, medical societies, State and local government entities, private (35954) practitioners and concerned citizens. The comments included both general and broadreaching concerns regarding the impact of this regulation, and specific comments on those areas and safe harbor provisions about which we requested public input. A summary of the comments received and our responses to those comments follows.

A. General Comments

Comment: A large number of commenters expressed concern about the implication of engaging in a business arrangement that does not comply fully with a provision of this regulation. Some of these commenters expressed the view that the safe harbor provisions are narrowly drawn and leave many lawful business arrangements unprotected. Moreover, the preamble to the proposed rule warns: "[W]here individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to comply fully with one of the exemptions in these regulations, they would risk scrutiny by the OIG \* \* \*." These commenters urged the OIG to make clear that the failure to comply fully with a safe harbor provision is not per se illegal, and does not mean that prosecution will automatically follow. In addition, they requested safe harbor protection for business arrangements where there has only been a "technical violation" of the statute, where there has been "substantial compliance" with this regulation, or where the remuneration in question is "de minimis."

Response: This regulation covers many categories of business arrangements, providing standards to be met within each safe harbor provision. If a person participates in an arrangement that fully complies with a given provision, he or she will be assured of not being prosecuted criminally or civilly for the arrangement that is the subject of that provision.

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

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

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

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

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

### 2NC---AT: No Enforcement Power

#### Section 5 has teeth. It effectively enforces without wave one damages.

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: Links to Politics

#### CP avoids politics

#### *Even if* the political branches would otherwise hate the Cplan, Agency Guidance docs *won’t face retaliation*.

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

Guidance documents generally attract less attention from Congress and the President, giving agency leaders greater latitude to impose their preferred policy choices. Guidance is not subject to the many procedural requirements devised to alert the political branches to agency rulemaking activity. 92 In addition, guidance documents arouse less attention and opposition. Agencies can generally issue a guidance document without attracting advance publicity. The agency therefore has the opportunity to set a new status quo before opponents mobilize. This status quo may generate self-reinforcing feedbacks that strengthen the agency's position. By contrast, agencies must solicit comments on legislative rules. This process generates political activity that may be noticed by Capitol Hill and the White House; some important legislative rulemakings gain political salience as interest group conflict escalates during the notice and comment process. 93 This comparison is not intended to suggest that interest groups are unaware of guidance documents. Rather, at the margin, legislative rules arouse more interest group attention and opposition, which results in greater congressional interest. Guidance documents, therefore, are relatively more attractive in cases where Congress and the President are likely to intervene against the agency.

#### No backlash from lobbies

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

The elected branches hold a well-known set of tools to overturn agency decisions. Congress may reverse an agency rule legislatively or strip the agency of funds to implement the rule. 98 Congress also may implement very effective indirect sanctions including imposing general budget cuts, holding bruising oversight hearings, and removing portions of the agency's jurisdiction. These and other tools may be used equally against legislative rules or guidance documents. However, guidance documents may be less likely to provoke interest groups to press Congress to use these tools against the agency. Presidents too may reverse agency actions. In some cases, they may seek to exercise directive authority to dictate an agency leader's decision.99 Presidents may also seek to change agency decisions via institutionalized procedures such as OMB review of agency legislative rules.

B. Alignment of Political Principals

Agency leaders facing a Congress and President in agreement on their issue area have a relatively simple means of minimizing political pressure: obey their political principals. This is not to suggest that agencies hold no discretion during unified government. Nonetheless, agencies hold greater slack when Congress and the President are divided. This situation is more likely when different political parties control the two branches.' Such division increases the cost of issuing a legislative rule. By contrast, a guidance document is less likely to draw the attention of Congress and the President because it is exempt from the numerous procedural requirements that alert the political branches to agency rulemakings. °2 In short, this Note argues that the advantage of avoiding this attention increases when Congress and the President are divided because the agency cannot please both of its superiors.

#### AND - Clear standards means CP doesn’t link to politics.

Salop ‘21

et al; Steven C. Salop, Professor of Economics and Law, Georgetown University Law Center “A New Section 5 Policy Statement Can Help the FTC Defend Competition” – Public Knowledge – July 19th - #E&F - https://publicknowledge.medium.com/a-new-section-5-policy-statement-can-help-the-ftc-defend-competition-a76451eacb39

We generally agree with the Federal Trade Commission’s decision to rescind its 2015 Section 5 Policy Statement. Just as the Department of Justice and Federal Trade Commission Merger Guidelines are regularly updated on the basis of agency experience, legal and economic developments, so should this type of policy statement. Rescinding the old statement is particularly relevant in light of the growing recognition of the hurdles preventing effective antitrust enforcement.

Calls for reform have not come solely from Neo-Brandeisian commentators (including both FTC Chair, Lina Khan, and Tim Wu, now a member of the National Economic Council). The need for reform and a varied set of proposals has also been expressed by economics-oriented commentators, including this group of former Justice Department enforcers, Jonathan Baker and Herbert Hovenkamp, among others. Chair Khan in her statement suggested that the Commission would next consider replacing the Policy Statement with a new statement explaining how they plan to use Section 5 to increase competition. We think this would be a valuable way to show parties and courts what is coming. This article provides several suggestions that would be useful to consider and possibly include in the revised Section 5 Policy Statement. It should not be taken as an exhaustive list; there certainly may be other approaches to a revised statement that could also be effective.

A revised Policy Statement should make it clear that Section 5 is not identical to the Sherman and Clayton Act and that conduct can be challenged as an unfair method of competition under Section 5 even if it would not violate these other antitrust laws. In fact, even the original 2015 Policy Statement explicitly made this point. But the distinction between Section 5 and these other statutes is often ignored or suppressed by commentators who object to more vigorous antitrust enforcement by the FTC. Eventually, the FTC’s cases and rules under Section 5 will likely face the scrutiny of the courts. At that time, it may be particularly helpful to have a clear Policy Statement of how the FTC is interpreting Section 5. This can help maximize the impact the FTC can have, while assuaging concerns of detractors who say there is no limiting principle.

### 2NC---AT: Certainty Deficit

#### CPlan solves legal unpredictability. Section 5 predictability is already low – Cplan brings more cases to resolution, turning uncertainty.

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 - https://www.ftc.gov/sites/default/files/documents/public\_statements/promoting-innovation-just-how-dynamic-should-antitrust-law-be/100323uscremarks.pdf

To be clear, I do not mean to say that the Commission should simply throw its hands up anytime it faces a hard question of law under Section 2 and retreat to Section 5. We do no one a service if that is our practice.35 What I do mean to say, however, is that there may be instances where ordinarily courts might find that a rule of Sherman Act law would not impose liability, but where the particular facts of a case nevertheless suggest that liability should attach because a firm’s conduct is having anticompetitive effects that are not outweighed by a pro-competitive business justification. In these cases, if we force the case into a Sherman Act framework we run the risk of either making bad law (to bring an unusual case within the ambit of existing precedent) or, alternatively, losing the case even though the firm’s conduct is causing anticompetitive effects because of binding precedent that is ill suited to judge the conduct at hand.36 In my view, the Commission does a greater service by declaring the practice to be an “unfair method of competition,” provided that we clearly articulate – be it in a consent decree or a decision – what that unfair method of competition is and why the conduct constitutes an unfair method of competition so that future parties are on notice. Moreover, the more of these Section 5 cases we actually litigate, the more clarity and finality we can get once and for all on the scope of our Section 5 authority. That certainty ultimately has to be better than the endless debating that the antitrust bar is now engaged in.

#### Cplan is better for legal and business predictability

Khan ‘20

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

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

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

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

### 2NC---Condo---Long

### 2NC---AT: Theory

#### They were identified as THE CORE CONTROVERSY. Don’t take our word for it:

* This is typically self-serving conjecture by the Neg, but …

Topic Paper ‘21

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

II. Core Controversy

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

## MMAC

### 2NC---AT: Five Eyes !

#### BUT five eyes collapse inev---FISA surveillance is being wrecked in sunsets---surveillance is the lynchpin of the alliance--- Wrecks the Five Eyes – way more important than the plan

Nyst 14 (Carly Nyst, Head of International Advocacy at Privacy International, “The UN Privacy Report: Five Eyes Remains,” 8-13-2014, http://www.globalpolicyjournal.com/blog/13/08/2014/un-privacy-report-five-eyes-remains)

Carly Nyst discusses the recent report commissioned by the UN General Assembly in response to the political fallout of Edward Snowden’s revelations of American and British mass surveillance programmes. The report condemns modern surveillance techniques, particularly the secret Five Eyes spying alliance, which enables the US and UK to share vast amounts of surveillance with Australian, Canadian and New Zealand intelligence agencies. The United Nations delivered a searing rebuke to the digital mass surveillance practices of the United States in a report that systematically picks apart many of the legal justifications employed by government officials defending US and UK spying activities. The secret Five Eyes spying alliance, which enables the US and UK share vast amounts of surveillance with Australian, Canadian and New Zealand intelligence agencies, faces an existential threat if some of the conclusions in the report gain traction in national courts and legislatures. The report, commissioned by the UN General Assembly in response to the political fallout of Edward Snowden’s revelations of American and British mass surveillance programmes, is the strongest condemnation of modern surveillance techniques that any international authority has appropriated to date. The release of the report couldn’t be more timely; the US is in the midst of debating surveillance reforms, and in the UK, emergency legislation granting government new spying powers was rammed through Parliament in the same week the courts considered challenges to surveillance laws . A line in the sand For more than a year we have listened as officials in the US and UK defended the mass surveillance programs revealed by Edward Snowden. No one is reading your email, they’d say. No one is looking at the content of your communication. Don’t worry, it’s only the bad guys over there that we’re interested in. We are completely in compliance with international law. Navi Pillay, the UN High Commissioner of Human Rights, disagrees. She has issued a salvo of attacks on the legal excuses advanced by States that have sought to justify bulk collection under international law. Even if the government isn’t actually reading emails, they are tampering with individuals’ privacy. The very existence of a bulk collection program, such PRISM in the United States or the United Kingdom’s TEMPORA program, fundamentally interferes with privacy. Even where bulk collection programs serve a legitimate aim and have been approved through clear legal framework, they may still be unlawful because of the disproportionate impact of collecting metadata upon privacy rights. And, perhaps most significantly, laws which discriminate between the protections given to US and non-US persons have been shot down. Where the US interferes with communications infrastructure, by tapping cables or demanding access to data held by US internet services, they are obliged to consider the human rights of any person whose privacy they interfere with, and cannot discriminate against foreigners on the basis of their nationality or location–counter to the entire premise upon which FISA is based. Taken to its logical conclusion, this stance may spell the end of the carefully crafted legal loop-holes that the NSA relies on to maintain foreign surveillance activities. An end to unaccountable intelligence-sharing? The report also creates an existential crisis for intelligence-sharing arrangements, such as the Five Eyes

alliance of the US, UK, Canada, Australia and New Zealand. In providing some of the most robust analysis by any authority to date on the relationship between foreign intelligence and human rights, Ms Pillay suggests that any effort by governments to coordinate surveillance practices in order to 'outflank the protection provided by domestic legal regimes' is unlawful. As a British court heard last week in a case against UK foreign intelligence agency GCHQ, this is precisely the purpose of the Five Eyes arrangement. There is no clear and accessible legal regime that specifies the circumstances in which, Five Eyes authorities can request access to signals intelligence from, or provide such intelligence, to another Five Eyes authority. Each of the Five Eyes states have broad, vague domestic laws that purport to warrant the sharing of and access to shared signal intelligence, but fail to set out minimum safeguards or provide details of or restrictions upon the nature of intelligence sharing. Moreover, the domestic legal frameworks implementing the obligations created by the Five Eyes agreement are carefully constructed to provide differing levels of protections for internal versus external communications, or those relating to nationals versus non-nationals. These frameworks attempt to circumvent national constitutional or human rights protections governing interferences with the right to privacy of communications that, states contend, apply only to nationals or those within their territorial jurisdiction. In the UK, the Intelligence and Security Committee–in charge of overseeing the actions of the UK intelligence agencies, including GCHQ–responded to the Snowden leaks remarking 'It has been alleged that GCHQ circumvented UK law by using the NSA’s PRISM programme to access the content of private communications […] and we are satisfied that they conformed with GCHQ’s statutory duties. The legal authority for this is contained in the Intelligence Services Act 1994.' Yet the chair of the ISC has in fact admitted to confusion about whether 'if British intelligence agencies want to seek to know the content of emails can they get round the normal law in the UK by simply asking an American agencies to provide that information?' When the head of the comilmittee charged with overseeing the lawfulness of the actions of intelligence services is unsure as to whether such agencies have acted lawfully, there is plainly a serious dearth in the accessibility of law, calling into question the rule of law. The UN’s report also takes umbrage at the 'secret rules' and FISC-like 'secret judicial interpretations' of laws. Any legal framework that gives executive authorities­–such as security and intelligence services–excessive discretion will be unlawful under international law, according to the UN. It is difficult to imagine how the Five Eyes intelligence sharing arrangement could ever pass muster if this is the threshold. The original Five Eyes agreement demanded secrecy, stating 'it will be contrary to this agreement to reveal its existence to any third party unless otherwise agreed' resulting in modern day references to the existence of the agreement by the intelligence agencies remaining limited. The existence of the agreement was not acknowledged publicly until March 1999; it was not until 2010, that the US and UK declassified numerous documents, including memoranda and draft texts, relating to the creation of the agreement. Generally the Five Eyes States and their intelligence services have been far too slow in declassifying information that no longer needs to be secret, resulting in the absence of the arrangement on any government website until recently.

#### AND, Brexit and Wexit thump

Lo 21 (Alex Lo, former lecturer in journalism at the University of Hong Kong, South China Morning Post columnist covering major issues affecting Hong Kong and the rest of China, journalist for 25 years, “The coming collapse of the ‘Five Eyes’ club of nations,” South China Morning Post, 1-26-2021, <https://www.scmp.com/comment/opinion/article/3119362/coming-collapse-five-eyes-club-nations>)

Some foreign political observers have long predicted the coming collapse of China or at least the Chinese communist state, which, of course, would amount to the same thing.

But, in the current context of the rivalry between China and the West, we are much more likely to see the break-up of some members of the so-called Five Eyes spying club of English-speaking nations: the United Kingdom, the United States and Canada.

Of the three, the UK is in the most obvious danger, thanks to its “successful” Brexit. In new polls conducted by The Sunday Times of Wales, Northern Ireland, Scotland and England, secessionist sentiments run high.

In Scotland, 49 per cent support independence compared to 44 per cent against – a margin of 52 per cent to 48 per cent if the undecided are excluded.

Scottish First Minister Nicola Sturgeon, of the nationalist Scottish National Party, is fighting for a referendum on independence regardless of Westminster’s consent.

The same polls reveal that a majority of people in the UK, regardless of their own political preferences, believe Scotland will become independent within the next decade.

In Northern Ireland, 42 per cent favour unification with the rest of the Irish nation, while 47 per cent prefer to stay in the Union. However, 51 per cent support a referendum on a united Ireland within the next five years, compared to 44 per cent against. Both Northern Ireland and Scotland see Brexit as England’s wilful negation of their clear preference to stay in the European Union.

The break-up of the UK will, of course, have enormous consequences not just for its people, but for the world at large. Without going into such complicated issues as global security, economy and cultural influence, just imagine the proud Union flag, which represents the four nations. It will have to be dropped and replaced.

When people talk about Canada and separatism, they usually think of Quebec. The reality today is rather different. Most likely, if federalism were to fall apart, it would be from the western provinces. “Wexit”, as it is sometimes called, will be led by resource-rich Alberta and breadbasket Saskatchewan. However, they may well be followed by Quebec and the First Nations of natives.

An October 2019 survey by Ipsos, the market research and public opinion specialist, found that a third of Albertans think their province would be better off separated, up from 25 per cent from the previous year. That is about the same as the 26 per cent and 27 per cent who back separation respectively in francophone Quebec and Saskatchewan.

Quite simply, Alberta’s economy depends on oil and natural gas production; it also sends more money to Ottawa than it receives in terms of tax transfers.

To add insult to injury, many Albertans think Ottawa wants to kill their energy industry, especially with the environment-friendly policy of the Liberal government under Prime Minister Justin Trudeau. Last week’s statement by Canada’s energy minister, Seamus O’Regan, has been especially infuriating.

He said Canada must “respect” US President Joe Biden’s decision to kill the controversial Keystone XL pipeline project and rejected demands from provincial politicians to pursue punitive measures against the United States.

“It was an important campaign promise from candidate Biden. It’s the one he kept as President Biden,” he said.

The perception is that Ottawa cares more about Washington than one of its most important revenue-generating provinces.

Indeed, the federal government has been ambivalent about the Keystone XL project, which aims to transport a massive amount of tar sands oil from Alberta to Texas, the dirtiest type of fossil fuel because of the technical difficulties in extraction and processing.

Trudeau had run on a platform of environmental protection.

According to the US World Population Review in 2019, Alberta produces a shocking 62 tonnes of carbon dioxide equivalent per person per year, compared to about 17 tonnes per person by another giant oil producer, Saudi Arabia. But if your entire livelihood depends on oil sands, you may not care too much about global warming.

As a voter, though, you would care that more of your taxes go to the federal government than benefits you receive from it.

The latter point, of course, is not so simple. As Donald Savoie, an academic at the Universite de Moncton, has argued in Democracy in Canada: The Disintegration of Our Institutions, the province actually received a greater bang for its buck from federal spending than would be revealed by a simple accounting of the transfers of payments and benefits. But in politics, perception is all.

National break-ups don’t always have to be violent, though they often are. In the 1990s, Yugoslavia collapsed into a savage civil war that killed more than 150,000 people. However, Czechoslovakia divorced peacefully following referendums. If break-ups were to happen, the UK and Canada may end up closer to the Czechoslovakia scenario.

But there is no guarantee, given the fault lines between the Catholics and Protestants, and the long-standing antagonism between former members of the Irish Republican Army and the British establishment, in Northern Ireland.

### 2NC---AT: China War !

#### No risk of US – China war – diplomatic ties, economic interdependence, geography, nuclear postures, balancing powers, no ideological conflict – any crisis won’t escalate

Shifrinson, 19 – Joshua Shifrinson (Assistant professor of international relations at Boston University, “The ‘new Cold War’ with China is way overblown. Here’s why,” <https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm_term=.2f92e43bb9f3>)

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990. But such concerns are overblown. Here are four big reasons why. 1. The historical backdrops of the two relationships are very different When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links. In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop. 2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons. Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics. Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert. As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds. 3. The Cold War had just two major powers The Cold War took place in a bipolar system, with the United States and Soviet Union uniquely powerful, compared with other nations. This dynamic often pushed the United States and the U.S.S.R. toward confrontation and contributed to more or less fixed alliances; moreover, it encouraged efforts to suppress prospective great powers, such as Germany. In 2019, it’s not at all clear we are back to bipolarity. Analysts remain divided over whether the U.S. unipolar era is waning (or is already over) — and, if so, whether we are heading for a new period of bipolarity, modern-day multipolarity or something else. Regardless, most analysts accept that other countries will play a central role in East Asian security affairs. Russia, for example, still benefits from legacy military investments, India is developing economically and militarily, and Japan is beginning to build highly capable military forces to complement its still-significant economic might. Even if these nations aren’t as powerful as the United States or China, their presence makes for more fluid diplomatic arrangements and more diffuse security concerns than during the U.S.-Soviet competition. The resulting security dynamics are therefore likely to look very different. 4. Ideology plays less of a role in U.S.-Chinese relations Many people see the Cold War as an ideological contest between U.S.-backed liberalism and Soviet-backed communism. But that’s not the whole story. The early 20th century saw liberalism, communism and fascism vie for ideological preeminence. With fascism defeated alongside Nazi Germany, the postwar stage was set for a struggle between communism and liberalism to reinforce the U.S.-Soviet contest. That each ideology claimed universal scope ensured that the ideologies served as rallying cries for Third World conflicts, which were subsequently associated with the U.S.-Soviet struggle. The respective “ideologies” of the United States and China do not favor this type of contest today. Indeed, analysts calling for a hard-line stance against China have faced difficulties even identifying a coherent Chinese ideological alternative. And while some researchers claim that a nascent ideological contest pitting an “autocratic” China against the “liberal” United States is emerging, this narrative ignores the political contests that shape Chinese politics (and have parallels in U.S. politics). Autocracies and democracies often cooperate. And on one important ideological issue — how they organize their economic lives — China and the United States have both embraced economic growth via trade, the private sector and semi-free markets. Likewise, while a clearer Chinese ideological “brand” may eventually emerge, it is unclear whether the ideology would claim universal applicability. This is not to deny that there are tensions between the United States and China. What we are seeing, however, is not a new cold war but a reversion to a pre-1945 form of great power politics. What changed? Put simply, the United States no longer enjoys preeminence as the only superpower, as it did in the immediate post-Cold War era. The ideological, historical and geopolitical differences between today and the Cold War years far outweigh the similarities. As David Edelstein notes, at times it’s hard to understand what the United States and China are competing over. If that’s true, then there’s reason to believe there are more nuanced ways of understanding the tensions — and options for managing great power politics — than a Cold War reboot.=

#### Rising China won’t escalate conflicts

McKinney 19 (Jared Morgan McKinney – PhD candidate @ the S. Rajaratnam School of International Studies, Nanyang Technological University (Singapore). Nicholas Butts – CSIS Pacific Forum Young Leader, LL.M. from Peking University, MSc from The London School of Economics, MPA from Harvard’s John F. Kennedy School of Government, Harvard Crown Prince Frederik Scholar and a Cheng Fellow. <KEN> “Bringing Balance to the Strategic Discourse on China’s Rise,” Journal of Indo-Pacific Affairs. Winter 2019. https://www.airuniversity.af.edu/Portals/10/JIPA/journals/Volume-02\_Issue-4/McKinney.pdf)

In the abstract, such claims are alarming—in context, and in balance, rather humdrum. In fact, the evidence of any Chinese intention to destroy, or even merely undermine and exploit, the current order is slight. China is certainly using its growing military power to defend its claims in the SCS and even—on occasion— to coerce its neighbors. It uses protectionist economic policies to boost the prospects of Chinese companies and reduce competition. It employs economic statecraft to serve its interests abroad. And it certainly is opposed to America’s policy of global democracy promotion. However, none of these positions fundamentally challenge the existing order, none of them radically depart from America’s own actions when it was a rising power in the nineteenth century, and none of them obviously surpass America’s own contemporary record of order subversion.

When the United States was a rising power, it took half of Mexico and considered taking the rest, it colonized the Philippines and Hawaii, and it unilaterally seized the maritime choke points of the Caribbean (Puerto Rico and Cuba).21 The United States used tariffs—which by 1857 averaged 20 percent22 and by the end of the nineteenth century were “the highest import duties in the industrial world”23—to protect its industries. It stole intellectual property,24 and it ideologically challenged the governments of the “Old World.” Today, despite no longer being a rising power, the United States has launched two disastrous invasions, tortured prisoners, and dispatches drone strikes at a whim with little international legal authority.25 The point is not that two wrongs make a right; it is that international order is much more resilient than critics seem to realize,26 and it is utopian to expect any rising Great Power to act in a way that uniformly satisfies one’s moral scruples, evolving, in Friedberg’s words, “into a mellow, satisfied, ‘responsible’ status quo power.”27

Friedberg or Harris might object that America’s rise took place in the context of a different order. This is perfectly true, but the more important point is that the long nineteenth century (1815–1914)—the era of America’s rise—was the first iteration of the New Peace.28 The implication is that relative peace can and has coexisted with limited wars, property and territorial thefts, acts of coercion, and aggressive assertions of status. This does not mean any of these are desirable— they are not—but it shows that they need not be fatal to the system. Insofar as there is a lesson from that first period of relative peace, it is that Great Power confrontation is the one thing that is fatal. Accepting this does not mean capitulating in every instance, as implied by some,29 but it does mean rediscovering the rules of Great Power competition30 alongside the art of strategy.31

Focusing only on areas that China’s rise violates the scruples of the established powers, moreover, downplays the extent to which China, has, in fact, conformed to the existing order. As a RAND Corporation report published in 2018 concludes, China has been a supporter—albeit a conditional one—of the international order: “Since China undertook a policy of international engagement in the 1980s . . . the level and quality of its participation in the order rivals that of most other states.”32 The way in which Xi Jinping, following his 2017 Davos speech in defense of globalization, has been heralded as the most prominent champion of international order and defender of globalization underscores the fact that there are different elements of this order, and that China supports many, if not most, of them. Even in places where China is supposedly “altering” the current order, Beijing tends to simultaneously affirm that order. China’s Asian Infrastructure Investment Bank, for instance, actually mirrors existing structures, and China has intentionally copied elements and “best practices” of the World Bank and Asian Development Bank. China is playing the same game, even if it is seeking a bigger role within it.33

To the contrary—Admiral Harris declares—China has a “dream of hegemony in Asia,”34 in which it seeks economically to draw the region’s states into a “China- centred Eurasian ‘co- prosperity sphere’”35 and militarily to “dominate East Asia,” beginning with the SCS.36 Such rhetoric has become the standard geopolitical interpretation of China’s rise.37 The implication—usually left unstated—is alarming: if China were to succeed, it could use the region as a base “perhaps even to attack the United States itself.”38 Alternatively, Ely Ratner declares, “uncontested Chinese dominance” to be the “biggest threat facing the United States . . . in Asia today.”39

Purveyors of the coming Chinese domination and/or hegemony rarely define their terms. The best they often manage is some dark reference to Nazi Germany, Imperial Germany, or Imperial Japan, as Friedberg does above with the phrase “co- prosperity sphere.” Hence we are often left with argument by aspersion, or— at best—by analogy, but reams of political science and cognitive science research have demonstrated how analogical reasoning typically is used as an alternative to serious thought and often, when left on its own, leads to poor decision making.40 Balanced thinking about China’s rise has to do better than this.

China’s intentions and dreams entirely aside, the nature of contemporary international relations and the geopolitical realities of Asia and East Asia make “dominance” and “hegemony”—both taken in the sense of imperial or borderline- imperial control over other sovereign states and territories—impossible.41 Nuclear weapons, norms, nationalism, defensive dominance, and globalization all tell a different story.42

Imperial dominance/hegemony, long a feature of states systems—from Hatti’s conquest of Mitanni in the mid- fourteenth century BCE in the Ancient Near East to Japan’s conquest of much of China and indeed Asia from 1937 to 1945— has ceased to be possible today among major states because of nuclear weapons, what Edward Luttwak calls “the irremovably extant court of appeal against an adverse verdict in the lower court of non- nuclear warfare.”43 Of course, not all states have nuclear weapons—even though some, like Japan, could acquire them easily—but here the other features of the modern era intercede.

### 2NC---AT: Russia !

#### No doomsday cyberattacks – last 25 years prove they don’t escalate and stay low level

Lewis 20 (senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies). Lewis, James. 2020. “Dismissing Cyber Catastrophe.” Center for Strategic & International Studies. August 17, 2020. https://www.csis.org/analysis/dismissing-cyber-catastrophe.

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack. To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge. It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted. More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are: Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals. There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.) No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare. State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war. This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation. The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability. One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1 This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often? Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer. The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

#### Russia cyber impact is nonsense---no desire and airgapping checks.

Dr. Andrew Futter 16, Associate Professor of International Politics and Director of Research for Politics and International Relations at the University of Leicester, “War Games Redux? Cyberthreats, US–Russian Strategic Stability, and New Challenges for Nuclear Security and Arms Control”, European Security, Volume 25, Issue 2, p. 171-172

It is of course highly unlikely that either the USA or Russia has plans – or perhaps more importantly, the desire – to fully undermine the other’s nuclear command and control systems as a precursor to some type of disarming first strike, but the perception that nuclear forces and associated systems could be vulnerable or compromised is persuasive. Or as Hayes (2015) puts it, “The risks of cyber disablement entering into our nuclear forces are real”. While the growing possibility of “cyber disablement” should not be overstated (notions of a “cyber-Pearl Harbor” (Panetta 2012) or “cyber 9–11” (Charles 2013) have done little to help understand the nature of the challenge), cyberthreats are nevertheless an increasingly important component of the contemporary US–Russia strategic context. This is particularly the case when they are combined with other emerging military-technical developments and programmes. The net result, especially given the current downturn in US–Russian strategic relations, and the way cyber is exacerbating the impact of other problematic strategic dynamics, is that is seems highly unlikely that either the USA or Russia will make the requisite moves to de-alert nuclear forces that the new cyber challenges appear to necessitate, or for that matter to (re)embrace the “deep nuclear cuts” agenda any time soon.

Assessing the options for arms control and enhancing mutual security

Given the new challenges presented by cyber to both US and Russian nuclear forces and to US–Russia strategic stability, it is important to consider what might be done to help mitigate and guard against these threats, and thereby help minimise the risks of unintentional launches, miscalculation, and accidents, and perhaps create the conditions for greater stability, de-alerting, and further nuclear cuts. While there is unlikely to be a panacea or “magic bullet” that will reduce the risk of cyberattacks on US and Russian nuclear forces to zero – be they designed to launch nuclear weapons or compromise the systems that support them – there are a number of options that might be considered and pursued in order to address these different types of threats and vulnerabilities. None, of these however, will be easy.

The most obvious and immediate priority for both the USA and Russia is working (potentially together) to harden and better protect nuclear systems against possible cyberattack, intrusion, or cyber-induced accidents. In fact, in October 2013 it was announced that Russian nuclear command and control networks would be protected against cyber incursion and attacks by “special units” of the Strategic Missile Forces (Russia Today 2014). Other measures will include better network defences and firewalls, more sophisticated cryptographic codes, upgraded and better protected communications systems (including cables), extra redundancy, and better training and screening for the practitioners that operate these systems (see Ullman 2015). However, and while comprehensive reviews are underway to assess the vulnerabilities of current US and Russian nuclear systems to cyberattacks, it may well be that US and Russian C2 infrastructure becomes more vulnerable to cyber as it is modernised and old analogue systems are replaced with increasingly hi-tech digital platforms. As a result, and while nuclear weapons and command and control infrastructure are likely to be the best protected of all computer systems, and “air gapped”14 from the wider Internet – this does not mean they are invulnerable or will continue to be secure in the future, particularly as systems are modernised or become more complex (Fritz 2009). Or as Peggy Morse, ICBM systems director at Boeing, put it, “while its old it’s very secure” (quoted in Reed 2012).

#### And no Russia war – disagreements remain limited

Weitz, 11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor 9/27/2011, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” [http://www.scribd.com/doc/66579517 /Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties](http://www.scribd.com/doc/66579517%20/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties))

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely **remain limited and compartmentalized. Russia and the West do not have fundamentally conflicting vital interests of the kind countries would go to war over.** And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

## FTC

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

Finishing 1nc

themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material by a state for the same reasons a state is unlikely to give them a workable bomb.46 Thus, they would need to steal or illicitly purchase the crucial material. A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49 It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50 If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51 Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53 Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54 Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals. The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off. The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud. The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

#### 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: BioD !

#### No impact to bio-d loss

Kareiva 12 (Peter Kareiva et. al, – Chief Scientist and Vice President of the Nature Conservancy, Michelle Marvier, Robert Lalasz, “Conservation in the Anthropocene Beyond Solitude and Fragility”, The Breakthrough, http://thebreakthrough.org/index.php/journal/past-issues/issue-2/conservation-in-the-anthropocene/)

2.

As conservation became a global enterprise in the 1970s and 1980s, the movement's justification for saving nature shifted from spiritual and aesthetic values to focus on biodiversity. Nature was described as primeval, fragile, and at risk of collapse from too much human use and abuse. And indeed, there are consequences when humans convert landscapes for mining, logging, intensive agriculture, and urban development and when key species or ecosystems are lost.

But ecologists and conservationists have grossly overstated the fragility of nature, frequently arguing that once an ecosystem is altered, it is gone forever. Some ecologists suggest that if a single species is lost, a whole ecosystem will be in danger of collapse, and that if too much biodiversity is lost, spaceship Earth will start to come apart. Everything, from the expansion of agriculture to rainforest destruction to changing waterways, has been painted as a threat to the delicate inner-workings of our planetary ecosystem.

The fragility trope dates back, at least, to Rachel Carson, who wrote plaintively in Silent Spring of the delicate web of life and warned that perturbing the intricate balance of nature could have disastrous consequences.22 Al Gore made a similar argument in his 1992 book, Earth in the Balance.23 And the 2005 Millennium Ecosystem Assessment warned darkly that, while the expansion of agriculture and other forms of development have been overwhelmingly positive for the world's poor, ecosystem degradation was simultaneously putting systems in jeopardy of collapse.24

The trouble for conservation is that the data simply do not support the idea of a fragile nature at risk of collapse. Ecologists now know that the disappearance of one species **does not** necessarily lead to the extinction of any others, much less all others in the same ecosystem. In many circumstances, the demise of formerly abundant species can be inconsequential to ecosystem function. The American chestnut, once a dominant tree in eastern North America, has been extinguished by a foreign disease, yet the forest ecosystem is surprisingly unaffected. The passenger pigeon, once so abundant that its flocks darkened the sky, went extinct, along with countless other species from the Steller's sea cow to the dodo, with no catastrophic or even measurable effects.

These stories of resilience are not isolated examples -- a thorough review of the scientific literature identified 240 studies of ecosystems following major disturbances

such as deforestation, mining, oil spills, and other types  of pollution. The abundance of plant and animal species as well as other measures of ecosystem function recovered, at least partially, in 173 (72 percent) of these studies.25

While global forest cover is continuing to decline, it is rising in the Northern Hemisphere, where "nature" is returning to former agricultural lands.26 Something similar is likely to occur in the Southern Hemisphere, after poor countries achieve a similar level of economic development. A 2010 report concluded that rainforests that have grown back over abandoned agricultural land had 40 to 70 percent of the species of the original forests.27 Even Indonesian orangutans, which were widely thought to be able to survive only in pristine forests, have been found in surprising numbers in oil palm plantations and degraded lands.28

Nature is so resilient that it can recover rapidly from even the most powerful human disturbances. Around the Chernobyl nuclear facility, which melted down in 1986, wildlife is thriving, despite the high levels of radiation.29 In the Bikini Atoll, the site of multiple nuclear bomb tests, including the 1954 hydrogen bomb test that boiled the water in the area, the number of coral species has actually increased relative to before the explosions.30 More recently, the massive 2010 oil spill in the Gulf of Mexico was degraded and consumed by bacteria at a remarkably fast rate.31

Today, coyotes roam downtown Chicago, and peregrine falcons astonish San Franciscans as they sweep down skyscraper canyons to pick off pigeons for their next meal. As we destroy habitats, we create new ones: in the southwestern United States a rare and federally listed salamander species seems specialized to live in cattle tanks -- to date, it has been found in no other habitat.32 Books have been written about the collapse of cod in the Georges Bank, yet recent trawl data show the biomass of cod has recovered to precollapse levels.33 It's doubtful that books will be written about this cod recovery since it does not play well  to an audience somehow addicted to stories of collapse and environmental apocalypse.

Even that classic symbol of fragility -- the polar bear, seemingly stranded on a melting ice block -- may have a good chance of surviving global warming if the changing environment continues to increase the populations and northern ranges of harbor seals and harp seals. Polar bears evolved from brown bears 200,000 years ago during a cooling period in Earth's history, developing a highly specialized carnivorous diet focused on seals. Thus, the fate of polar bears depends on two opposing trends -- the decline of sea ice and the potential increase of energy-rich prey. The history of life on Earth is of species evolving to take advantage of new environments only to be at risk when the environment changes again.

The wilderness ideal presupposes that there are parts of the world untouched by humankind, but today it is impossible to find a place on Earth that is unmarked by human activity. The truth is humans have been impacting their natural environment for centuries. The wilderness so beloved by conservationists -- places "untrammeled by man"34 -- never existed, at least not in the last thousand years, and arguably even longer.

#### Speciation rates are soaring

Briggs 16 – John C. Briggs, Affiliate Professor in the Department of Fisheries and Wildlife, Oregon State University, Global biodiversity loss: Exaggerated versus realistic estimates, Environmental Skeptics and Critics, 1 June 2016, Vol. 5, No. 2, pdf

**4.1 Species gained**

Over the past 50 years, alarm over a present **biod**iversity crisis and the beginning of a sixth mass extinction has continued to be spread by many ecologists, while **little attention** was paid to the possibility that there might have been **gains to offset the losses** or to actually cause an **overall increase**. As noted for the marine environment (Briggs and Bowen, 2013), invader species are part of a worldwide, dynamic system that often serves to **increase global diversity** by speciation following successful invasion. Other paths to speciation have also become apparent. Molecular research has revealed numerous cases of **rapid, adaptive divergence** resulting in ecological speciation. Such cases have been demonstrated in plants, vertebrates, and invertebrates (Hendryet al., 2007). Specific examples have been reported in mammals (Rowe et al., 2011), echinoderms (Puritz et al., 2012), and plants (Foxe et al., 2009). Within the past few centuries, species diversity has **increased** on oceanic islands and in many continental regions; in addition, no general decreases in diversity have been known to occur at regional scales (Sax and Gaines, 2003). Human introductions for agricultural and ornamental purposes have produced **substantial gains** in continental plant diversity (Ellis et al., 2012). Furthermore, De Vos et al. (2014), who examined a series of individual phylogenies, found that average extinction rates were less than average diversification rates. For these reasons, and in view of minimal losses, except for species endemic to isolated islands, it appears that terrestrial biodiversity gain is concurrent with, and probably **exceeds** biodiversity loss.

### 2NC---AT: Food Wars !

#### No impact

Rosegrant 13 – M ark W., Director of the Environment and Production Technology Division at the International Food Policy Research Institute, et al., 2013, “The Future of the Global Food Economy: Scenarios for Supply, Demand, and Prices,” in Food Security and Sociopolitical Stability, p. 39-40

The food price spikes in the late 2000s caught the world’s attention, particularly when sharp increases in food and fuel prices in 2008 coincided with street demonstrations and riots in many countries. For 2008 and the two preceding years, researchers identified a significant number of countries (totaling 54) with protests during what was called the global food crisis (Benson et al. 2008). Violent protests occurred in 21 countries, and nonviolent protests occurred in 44 countries. Both types of protest took place in 11 countries. In a separate analysis, developing countries with low government effectiveness experienced more food price protests between 2007 and 2008 than countries with high government effectiveness (World Bank 201la). Although the incidence of violent protests was much higher in countries with less capable governance, many factors could be causing or contributing to these protests, such as government response tactics, rather than the initial food price spike.

Data on food riots and food prices have tracked together in recent years. Agricultural commodity prices started strengthening in international markets in 2006. In the latter half of 2007, as prices continued to rise, two or fewer food price riots per month were recorded (based on World Food Programme data, as reported in Brinkman and Hendrix 2011). As prices peaked and remained high during mid-2008, the number of riots increased dramatically, with a cumulative total of 84 by August 2008. Subsequently, both prices and the monthly number of protests declined.

Several researchers have studied the connection between food price shocks and conflict, finding at least some relationship between food prices and conflict. According to Dell et al. (2008), higher food prices lead to income declines and an increase in political instability, but only for poor countries. Researchers also found a positive and significant relationship between weather shocks (affecting food availability, prices, and real income) and the probability of suffering government repression or a civil war (Besley and Persson 2009). Arezki and Bruckner (2011) evaluated a constructed food price index and political variables, including data on riots and anti-government demonstrations and measures of civil unrest. Using data from 61 countries over the period 1970 to 2007, they found a direct connection between food price shocks and an increased likelihood of civil conflict, including riots and demonstrations.

Other researchers have broadened the analysis by considering government responses or underlying policies that affect local prices, and consequently influence outcomes and the linkage between food price shocks and conflict. Carter and Bates (2012) evaluated data from 30 developing countries for the time period 1961 to 2001, concluding that when governments mitigate the impact of food price shocks on urban consumers, the apparent relationship between food price shocks and civil war disappears. Moreover, when the urban consumers can expect a favorable response, the protests only serve as a motivation for a policy response rather than as a prelude to something more serious, such as violent demonstrations or even civil war.

Many in the international development community see war and conflict as a development issue, with a war or conflict severely damaging the local economy, which in turn leads to forced migration and dislocation, and ultimately acute food insecurity. Brinkman and Hendrix (2011) ask if it could be the other way around, with food insecurity causing conflict. Their answer, based on a review of the literature, is "a highly qualified yes," especially for intrastate conflict. The primary reason is that insecurity itself heightens the risk of democratic breakdown and civil conflict. The linkage connecting food insecurity to conflict is contingent on levels of economic development (a stronger linkage for poorer countries), existing political institutions, and other factors. The researchers say establishing causation directly is elusive, considering a lack of evidence for explaining individual behavior. The debate over cause and effect is ongoing.

#### Global responses to food insecurity can effectively prevent conflict now

Emmy **Simmons 17**, nonresident senior adviser to the CSIS Global Food Security Project, independent consultant on international development issues with a focus on food, agriculture, and Africa, February 2017, “RECURRING STORMS: Food Insecurity, Political Instability, and Conflict,” http://reliefweb.int/sites/reliefweb.int/files/resources/170124\_Simmons\_RecurringStorms\_Web.pdf

Sharp rises in global food prices in 2007/08 **jolted global political leaders out of any complacency** they might have had regarding the future of food and agriculture. Street demonstrations and food riots broke out in more than 40 countries across the world, provoking unrest and violence in several places. The L’Aquila Food Security Initiative, launched by the G-8 and the G-20 in 2009, brought new funding and energy to the task of quelling the “perfect storm” of food insecurity set off by spiking global food and fuel prices, financial and commodity market turmoil, the competition of biofuel production, and adverse weather in key agricultural regions. The L’Aquila Food Security Initiative **successfully reversed** a decades-long decline in international support for agricultural development. To implement the L’Aquila Initiative, programs were put in place **across the developing world** to increase agricultural productivity, strengthen smallholder farmer linkages to commercial markets, and ensure that youth, women, and marginalized populations were full participants in the growth of the sector. But as this work went forward, new threats to sustainable food security became apparent. Changes in global weather patterns are now projected to have potentially devastating impacts on agriculture in the coming years and decades. The rising “double burden” of malnutrition already threatens to dampen global progress toward better health. Demographic change—a bulging population of youth in Africa and rapid urbanization—is creating opportunities for an economic growth spurt that will affect food demand and organized protests when food security is endangered. Food safety issues, economic and social inequities, and food price volatility are seen as persistent disrupters of food systems and food security. Outbreaks of civil unrest and violent conflict have deprived millions of reliable access to food and challenged their physical security and social cohesion. Whether these threats will combine to drive repeats of 2007/08’s “perfect storm” of food insecurity in the future is unknown. But it is predicted that, singly or together, they already pose critical risks—likely to erupt in “recurring storms”—somewhere around the globe. The L’Aquila Initiative was brought to a close in 2012. But in 2015, “ending hunger, achieving food security and improved nutrition, and promoting sustainable agriculture” was adopted as one of 17 Sustainable Development Goals (SDGs) to be accomplished by 2030. **Strong international collaboration** to build more productive and resilient households, nations, and food systems—to help them **withstand** the likely recurring storms of hunger, food insecurity, and agricultural market volatility—seems like the **obvious path forward**.

#### Biodiversity is resilient and inevitable

Sagoff 8 (Mark, Senior Research Scholar @ Institute for Philosophy and Public Policy @ School of Public Policy @ U. Maryland, Environmental Values, “On the Economic Value of Ecosystem Services”, 17:2, 239-257, EBSCO)

What about the economic value of biodiversity? Biodiversity represents nature's greatest largess or excess since species appear nearly as numerous as the stars the Drifters admired, except that "scientists have a better understanding of how many stars there are in the galaxy than how many species there arc on Earth."70 Worldwide the variety of biodiversity is **effectively infinite**; the myriad species of plants and animals, not to mention microbes that arc probably more important, apparently exceed our ability to count or identify them. The "next" or "incremental" thousand species taken at random would not fetch a market price because another thousand are immediately available, and another thousand after that. No one has suggested an economic application, moreover, for any of the thousand species listed as threatened in the United States.77 To defend these species - or the next thousand or the thousand after that - on economic grounds is to trade convincing spiritual, aesthetic, and ethical arguments for bogus, pretextual, and disingenuous economic ones.78 As David Ehrenfeld has written,

We do not know how many [plant] species are needed to keep the planet green and healthy, but it seems very unlikely to be anywhere near the more than quarter of a million we have now. Even a mighty dominant like the American chestnut, extending over half a continent, all but disappeared without bring¬ing the eastern deciduous forest down with it. And if we turn to the invertebrates, the source of nearly all biological diversity, what biologist is willing to find a value - conventional or ecological - for all 600,000-plus species of beetles?7\*

The disappearance in the wild even of agriculturally useful species appears to have **no effect** on production. The last wild aurochs, the progenitor of dairy and beef cattle, went extinct in Poland in 1742, yet no one believes the beef industry is threatened. The genetic material of crop species is contained in tens of thousands of landraces and cultivars in use - rice is an example - and does not depend on the persistence of wild ancestral types. Genetic engineering can introduce DNA from virtually **any species into virtually any other** - which allows for the **unlimited creation of biodiversity.**

A neighbor of mine has collected about 4,000 different species of insects on his two-acre property in Silver Spring, Maryland. These include 500 kinds of Lepidoptera (mostly moths) - half the number another entomologist found at his residence.80 When you factor in plants and animals, the amount of "backyard biodiversity" in suburbs is astounding and far greater than you can imagine.8' Biodiversity has **no value** "at the margin" because nature provides far more of it than anyone could possibly administer. If one kind of moth flies off, you can easily attract hundreds of others.

#### The countries that matter for their impact are resilient and institutional responses prevent escalation

Sarah **Cliffe 16**, Director of the Center on International Cooperation at New York University, 3/29/16, “Food Security, Nutrition, and Peace,” http://cic.nyu.edu/news\_commentary/food-security-nutrition-and-peace

However, current research **does not** yet indicate a clear link between climate change, food insecurity and conflict, except perhaps where rapidly deteriorating water availability cuts across existing tensions and weak institutions. But a series of interlinked problems – changing global patterns of consumption of energy and scarce resources, increasing demands for food imports (which draw on land, water, and energy inputs) can create pressure on fragile situations. Food security – and food prices – are a highly political issue, being a very immediate and visible source of popular welfare or popular uncertainty. But their **link to conflict** (and the wider links between climate change and conflict) is indirect rather than direct. What makes some countries more resilient than others? **Many** countries face food price or natural resource shocks **without falling into conflict**. Essentially, the two important factors in determining their resilience are: First, whether food insecurity is combined with **other stresses** – issues such as unemployment, but most fundamentally issues such as political exclusion or human rights abuses. We sometimes read nowadays that the 2006-2009 drought was a factor in the Syrian conflict, by driving rural-urban migration that caused societal stresses. It may of course have been one factor amongst many but it would be **too simplistic** to suggest that it was the primary driver of the Syrian conflict. Second, whether countries have strong enough institutions to fulfill a social compact with their citizens, providing help quickly to citizens affected by food insecurity, with or without international assistance. During the 2007-2008 food crisis, developing countries with low institutional strength experienced more food price protests than those with higher institutional strengths, and more than half these protests turned violent. This for example, is the difference in the events in Haiti versus those in **Mexico or the Philippines** where far greater institutional strength existed to deal with the food price shocks and **protests did not spur deteriorating national security** or widespread violence.

#### Resource shortages induce cooperation, NOT conflict.

Atkins, 16—PhD Candidate in Energy, Environment & Resilience at the University of Bristol (Ed, “Environmental Conflict: A Misnomer?,” <http://www.e-ir.info/2016/05/12/environmental-conflict-a-misnomer/>, dml)

The economic and strategic importance of oil and other non-renewable resource is indisputable. Yet the globalised character of international commerce has resulted in many nations ceasing to perceive resource dependency as a threat to autonomy or survival (Deudney, 1990). This interdependence has resulted in the decreased likelihood of inter-state conflict over control of resources, due to the price shocks these actions could propel across the system and the increasingly technological developments (Lipschutz and Holdren, 1990). Such dynamics are well illustrated by the 1973 oil crisis (Dabelko and Dabelko, 1993). Although the move by the Organisation of Arab Petroleum Exporting Countries (OAPEC) to restrict exports resulted in record price rises and the transformation of the international sphere, thus illustrating the economic relevance of resources, it did not result in international violent conflict. Furthermore, Le Billon (2001) has stated that the spectre of resource scarcity has resulted in the escalation of socioeconomic innovation and economic diversification – with the market mechanisms of contemporary capitalism creating an important impediment to conflict. In Botswana and Norway, minerals and oil, respectively, have been mobilised to ensure peaceful development rather than violent confrontation (Le Billon, 2001). Furthermore, in many cases potential scarcity has resulted in increased inter-state cooperation due to the shared interest in continued supply. The continued sanctity of the 1960 Indus Waters Treaty, between Pakistan and India, is an important example, with the spirit of cooperation over water resources enduring despite increased political tensions between the two nations (Wolf, 1998).

#### Costs outweigh benefits of going to conflict.

Atkins, 16—PhD Candidate in Energy, Environment & Resilience at the University of Bristol (Ed, “Environmental Conflict: A Misnomer?,” <http://www.e-ir.info/2016/05/12/environmental-conflict-a-misnomer/>, dml)

It is important to note that such conflicts predominantly occur on an intra-state basis, rather than between two nations. International conflict over environmental factors remain unlikely – whether due to the robust nature of the world trade system and dynamics of supply and demand or to the spread of small arms transforming the notion of traditional conflict (Deudney, 1990). An important example can be found in the assertions of water wars. Although the management of rivers is often complicated by their crossing of territorial boundaries and nations dependent on water from beyond their borders (Egypt, Hungary and Mauritania all rely on international watercourses for 90 per cent of their water), an international conflict exclusively over possession of and access to a shared water source is still to occur. The reasons for this are simply, as Wolf (1998: 251) states, ‘War over water seems neither strategically rational, hydrographically effective, nor economically viable.’ At the international level, the costs outweigh the benefits and cooperation is sought before conflict occurs.

## COMP

### 2NC---Kava

### 2NC---AT: Competitiveness !

#### No impact – especially not key to heg or economy

Krugman, 94 (Paul, Professor of Economics – Massachusetts Institute of Technology, “Competitiveness: A Dangerous Obession”, Foreign Affairs, March / April, Lexis)

Unfortunately, his diagnosis was deeply misleading as a guide to what ails Europe, and similar diagnoses in the United States are equally misleading. The idea that a country's economic fortunes are largely determined by its success on world markets is a hypothesis, not a necessary truth; and as a practical, empirical matter, that hypothesis is flatly wrong. That is, it is simply not the case that the world's leading nations are to any important degree in economic competition with each other, or that any of their **major economic problems** can be attributed to failures to compete on world markets. The growing obsession in most advanced nations with international competitiveness should be seen, not as a well-founded concern, but as a view held in the face of overwhelming contrary evidence. And yet it is clearly a view that people very much want to hold -- a desire to believe that is reflected in a remarkable tendency of those who preach the doctrine of competitiveness to support their case with careless, flawed arithmetic. This article makes three points. First, it argues that concerns about competitiveness are, as an empirical matter, almost completely unfounded. Second, it tries to explain why defining the economic problem as one of international competition is nonetheless so attractive to so many people. Finally, it argues that the obsession with competitiveness is not only wrong but dangerous, skewing domestic policies and threatening the international economic system. This last issue is, of course, the most consequential from the standpoint of public policy. Thinking in terms of competitiveness leads, directly and indirectly, to bad economic policies on a wide range of issues, domestic and foreign, whether it be in health care or trade.

#### Competitiveness is not zero sum.

Porter 12 — Michael E. Porter, Bishop William Lawrence University Professor at Harvard Business School and founder of the Institute for Strategy and Competitiveness, Jan W. Rivkin, Bruce V. Rauner Professor of Business Administration and Senior Associate Dean for Research at the Harvard Business School, March 2012 (“The Looming Challenge to U.S. Competitiveness”, Harvard Business Review, p. 4, Accessed Online at <http://www.harvardbusiness.org/sites/default/files/The%20Looming_Challenge_to_US_Competitiveness.pdf>)

Competitiveness is not a zero-sum game, in which one country can advance only if others lose. Long-term productivity—and, along with it, living standards—can improve in many countries. Global competition is not a fight for a fixed pool of demand; huge needs for improving living standards are waiting to be met around the world. Productivity improvements in one country create new demand for goods and services that firms in other countries can pursue. Greater productivity in, say, India can lead to higher wages and profits there, boosting demand for pharmaceuticals from New Jersey and software from Silicon Valley. Spreading innovation and productivity improvement allows global prosperity to grow.

### 2NC---AT: Heg !

#### China can’t challenge---US heg is locked-in.

---China’s internal security costs and wasteful growth approach mean the US is comparatively stronger

---America per capita GDP is higher, dollar heg, allies, and soft power lock-in heg

Brands 12-9 (Hal Brands, Distinguished Professor at Johns Hopkins University’s School of Advanced International Studies and scholar at the American Enterprise Institute, “China's Global Power Tops the U.S.? New Measures Say No,” 12/09/20, <https://www.bloomberg.com/amp/opinion/articles/2020-12-10/china-s-global-power-tops-the-u-s-new-measures-say-no?srnd=opinion&sref=nmVx3tQ5&__twitter_impression=true>, TM)

Ever since the U.S. reached the pinnacle of global power after World War II, Americans have worried it wouldn’t remain there. Waves of “declinism” rolled across the country after Sputnik in the late 1950s, the Vietnam War, the oil shocks of the 1970s, the rise of Japan in the 1980s, and the Iraq War and the global financial crisis of the 2000s. Now, amid a global pandemic and at the onset of a long struggle with China, the question of American decline has taken on renewed urgency. The trouble with these debates is that power is as elusive as it is essential: It can be devilishly hard to measure outside of major war. (In war, it’s easy: Who won?) Recently, though, several innovative studies have sharpened our understanding of what power is and how to measure it — studies that are mostly, but not entirely, reassuring for a status-obsessed superpower. Traditionally, measures of power focused on attributes such as population, energy consumption and production of steel or other indicators of industrial strength. In the information age, these indices tell us relatively little about whether a country can get its way in world affairs. It is still common, though, to assess power through blunt measures like gross domestic product or military spending. Analysts who argue that Beijing is overtaking the U.S. habitually note that China’s GDP may soon surpass America’s. But GDP is a snapshot of activity rather than a measure of overall wealth. Some countries that spend massively on military power, such as Saudi Arabia, are quite useless in projecting it. So how can we determine the balance of advantage in a long rivalry? The groundbreaking academic work is giving us better answers. The first category focuses on refining our grasp of economic and military might. Michael Beckley of the American Enterprise Institute (where I am also a fellow) has developed a model that measures net power rather than gross power by accounting for things such as security costs (“the price a government pays to police and protect its citizens”) and production costs (how much it costs, in material and environmental degradation, to build that coal power plant). He finds, not surprisingly, that the U.S. fares far better than China, an authoritarian state with vast internal security costs and a prodigiously wasteful approach to stimulating growth. Similarly, it is critical that American per capita GDP dwarfs China’s, because that means the U.S. has more wealth left over, after it feeds its population, to pursue global influence. Other work has better accounted for the way wealth accrues over time, and found that the U.S. will still have far more overall economic power than China even after China’s GDP eclipses America’s. The second category better captures the reality of “network power.” In a landmark paper published in 2019, Abraham Newman of Georgetown University and Henry Farrell, my colleague at the Johns Hopkins School of Advanced International Studies, argue that the centrality of the dollar to international financial networks — which persists, despite decades of handwringing about its decline — gives the U.S. outsized coercive leverage. Scholars have also affirmed something that policymakers have long understood: America punches far above its own weight in global affairs, because of the network of military, economic and diplomatic partners it leads. China has nothing equivalent. The third category accounts for less tangible forms of power. For decades, analysts have grasped that soft power — the degree of admiration and emulation a country inspires — matters enormously. An intriguing study by Ted Hopf of the National University of Singapore, Bentley Allan of Johns Hopkins and Srdjan Vucetic of the University of Ottawa demonstrates that, even though America’s global favorability ratings have plummeted under President Donald Trump, there remains strong global support for democracy and free-market economic policies. That’s a body blow for an authoritarian, mercantilist China, which, the authors predict, “is unlikely to become the hegemon in the near term.” It also helps explain why European states are systematically turning away from Beijing even amid enormous turbulence in their relations with the U.S.

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

#### Decline inevitable

Levin 20 (Peter Levin, co-founder and CEO of Amida Technology Solutions, and a senior adjunct fellow at the Center for a New American Security; Greg Douqet, former Marine Corps colonel, co-founder and managing partner of Red Duke Strategies LLC, and co-director of the Atlantic Council Global Energy Center's Veterans Advanced Energy Project, “Column: The U.S. is falling behind in science and engineering,” 12/02/20, QC Online, <https://qconline.com/opinion/columnists/column-the-u-s-is-falling-behind-in-science-and-engineering/article_fcfab0d6-6da7-5def-ae0f-5f1b39d5e5ef.html>, TM)

In January of this year the National Science Board, which is part of the National Science Foundation, published its biennial report on Science and Engineering Indicators. It captures how the United States compares to other countries from the perspective of degree production, investments in research and development, and scientific articles and patents (as a proxy for technical prowess). Basically, we're falling behind on every major measure, which means we may not have enough trained people and core competencies to combat climate change, defeat contagious viruses or compete in the growing market for advanced energy systems. This is a dangerous signal. Not only have we closed the borders (even to students) and raised the walls (literally and figuratively) to shared knowledge, we have diluted educational achievement standards at home and outsourced our critical manufacturing capabilities overseas. Turning the tide will require new educational policy, targeted federal funding and visionary executive leadership. Investment in science reveals verifiable facts that we use to live longer, happier, more-affordable lives. It also leads to products and services that we can sell in foreign markets. The only "alternative fact" that matters is that China is eager to assume any mantle we abandon or neglect.

## FTC

CONCEDE

## PTX

### O/V

### T/C – Heg

#### Turns leadership

Long 17 (Heather Long, economics correspondent at The Washington Post, Rhodes Scholar, MA Financial Economics, Oxford University, “With the debt ceiling, President Trump is playing with fire,” Wonk Blog, The Washington Post, 8-25-2017, https://www.washingtonpost.com/news/wonk/wp/2017/08/25/5-reasons-why-hitting-the-debt-ceiling-would-be-disastrous/?noredirect=on&utm\_term=.ed39dd4d6b37)

The danger of this ongoing game of chicken, however, is that at some point someone will miscalculate and the government will actually hit the debt limit, sparking a default, intentional or otherwise.

Here are five reasons that would cause global panic.

First, it would trigger a wild ride for stocks and bonds. Wall Street doesn’t like bad surprises. This would be a big one. It would be “unprecedented in the modern era,” says Shai Akabas, economic policy director at the Bipartisan Policy Center. There would probably be an immediate, negative reaction in the markets, especially for U.S. stocks and bonds. It's hard to predict how ugly it would get, but investors would be digesting both the shock that the “full faith and credit of the United States” is tarnished and the fact that Trump and Congress probably won't get tax reform done if they can't even accomplish a “must do” item.

Second, America's cheap funding source would end. The United States can borrow money at extremely low rates because there's a fundamental belief around the world that America always pays its debts on time. That's why America still has a top-notch AAA credit rating (at least from two of three main rating agencies). As soon as the United States actually defaults, investors would start suing the country, and they would almost certainly insist on much higher interest rates in the future.

It's already happening. The fear of a potential default in October has sent America's short-term bond yields (known as T-bills) much higher than usual. A similar spike happened in 2011 and 2013 when America also got close to its “X” date. It cost the United States hundreds of millions more in interest, according to a Federal Reserve study. If an actual default happens, taxpayers would end up with an even bigger bill (think billions more dollars, if not worse).

Third, real people won't get paid. This is not a game. The Trump administration would have to either stop payments to everyone or they would have to pick who gets paid and who does not. That means deciding between bondholders, Social Security recipients, welfare recipients, companies that provide equipment to our military, people and businesses awaiting IRS tax refunds, etc. Someone won't get their money. That could easily be a retiree in the United States or overseas, since about half of America's debt is held by foreigners.

Fourth, America’s global power would decline. A default would be a major hit to America's “soft power.” The U.S. dollar is the world's reserve currency. People carry dollars and hold U.S. bonds all over the world because they believe America is their best and safest bet. A default would probably cause the value of the dollar to drop and global investors to shift some money out of U.S. assets. Even a short default could have long-lasting damage to America's reputation. Other countries won't be so quick to “buy American” down the road. And you can bet China, America's largest foreign creditor, will be livid.

### T/C – Multilat

#### Turns multilat

González – Sept 12th - ’18 Arancha González is an economist who teaches on trade at the College of Europe (Bruges), the IELPO (Barcelona) and the Shanghai Institute of Foreign Trade. González began her career in the private sector as an associate at German law firm Bruckhaus Westrick Stegemann advising companies on trade and competition. González is currently the Executive Director of the International Trade Centre – “The catastrophe if another global financial crisis strikes” - The Economist - Sept 12th - #CutWithRJ - https://www.economist.com/open-future/2018/09/12/the-catastrophe-if-another-global-financial-crisis-strikes

∂ Then, in 2019, the American business cycle turned. In China, confidence in corporations’ ability to service debt fell. Financial markets plummeted. As the renminbi lost value, making Chinese products cheaper abroad, the American government placed even tougher quotas on many imports. Surplus goods from China flooded into other markets, where pressure to raise import barriers became irresistible. The downturn worsened. Job losses soared into the tens of millions. ∂ This account is fiction, of course. But ten years ago this autumn, something similar might well have unfolded. ∂ When Lehman Brothers, an investment bank, imploded in September 2008, a casualty of the subprime mortgage meltdown, contagion quickly spread to major financial institutions in America and Europe. Banks stopped lending money to each other. Borrowing costs skyrocketed, business lending shrivelled up, trade finance almost dried up. The world economy was suffocating. ∂ In the twelve months from April 2008, global trade, industrial output and the value of the stock market all fell faster than they had during the first year of the Great Depression of the 1930s.∂ Fortunately for us, that is where the parallels ended. Four years on from the crash of 1929, global economic output was still well below pre-crisis levels. World trade had fallen by two-thirds. In contrast, by 2012, not only were output and trade volumes well above pre-2008 levels, but foreign direct investment had more or less recovered, and extreme poverty had continued its steady decline. ∂ Why was the period after 2008 different? ∂ For one, governments had a better policy toolkit. They were able to stimulate their economies by spending more and slashing interest rates. Their predecessors in the 1930s, in thrall to misguided ideas about balanced budgets and the gold standard, had resorted to import restrictions, which proved collectively catastrophic. ∂ Another big reason for the effectiveness of governments’ response to the 2008-09 crisis was international co-operation. In November 2008, the G20 collectively pledged to provide fiscal and monetary stimulus and to refrain from protectionism. This assured each country that its policies would be reinforced, not weakened, by those of its counterparts. Through the World Trade Organisation (WTO), governments monitored each other’s trade and investment restrictions, and worked to solve a shortfall in trade finance. Governments did end up introducing various small-bore protectionist measures, but markets remained broadly open.∂ This co-operative response relied on positive-sum thinking. The Federal Reserve provided trillions of dollars of liquidity to foreign as well as domestic banks, directly and through swap lines with central banks in Europe and Japan, because it recognised that financial stability abroad would enhance financial stability at home. The focus on “win-win” outcomes allowed governments to invert the late MIT economist Charles Kindleberger’s famous description of 1930s policymaking. This time, countries kept the global public interest in mind, and by doing so, better protected their respective national private interests. The system worked.∂ Would it work again today? It doesn’t look promising. The ongoing trade hostilities are the product of a zero-sum approach to global economic relations. Too many leaders now dismiss international rules as unfair impingements upon national sovereignty. ∂ Yet the fact is that cross-border flows of goods, services, capital and data have left us profoundly interdependent. One country’s fiscal, monetary, and regulatory policies affect another’s growth. Even if trade and investment were drastically curtailed, we would still have to deal with the cross-border implications of climate change, migration, cyber-security, terrorism and pandemic disease. To claim the nation-state can exert complete sovereignty in the face of these transnational challenges is not just a lie; it deliberately lowers defences against their economic and social consequences. National stability and prosperity demand that governments co-operate to build global resilience. ∂ To be sure, multilateralism in the age of instant communication can no longer be the primarily inter-governmental process of the post-war decades. Modern multilateralism will be the collective product of different actors engaging across borders in different configurations. This is already happening. The Paris Agreement on climate change has spurred research and development into low-carbon technologies; major cities have allied to share information and technical advice about reducing emissions. International agreements have taken useful steps forward on curbing banking secrecy and corporate tax avoidance, and making big banks less vulnerable to destabilising failure.∂ The frontiers of trade governance can be usefully pushed forward by bilateral and regional agreements, as well as within the WTO. Governments could, for instance, usefully define shared parameters for policies to encourage emerging digital technologies such as artificial intelligence and advanced robotics. Clear global rules would minimise trade tensions and solidify incentives to invest. They would also foster competition based on ingenuity rather than “buy domestic” policies or other market restrictions like forced tech transfer or breaches of intellectual property rights. Authorities currently playing regulatory catch-up with a handful of powerful tech companies might welcome the opportunity to redefine a more open and fairer playing field.∂ Multilateral co-operation is frequently derided as naïve idealism. In fact, the opposite is true: it is a matter of cold self-interest for countries’ future economic and security prospects. As Benjamin Franklin put it, we must hang together, or we will hang separately.∂

### AT: U O/W – T/L

#### Our arg was never that the debt ceiling would never get raised – only that attaching it to the CR is key to avoid delay that risks miscalc and accidental default AND market overreactions to brinksmanship

Strain 9-10-21 (Michael R. Strain, director of economic policy studies and Arthur F. Burns Scholar in Political Economy at the American Enterprise Institute, Bloomberg Opinion columnist, “Raise the Debt Ceiling, Republicans. You’ll Be Glad You Did.” The Washington Post, 9-10-2021, https://www.washingtonpost.com/business/raise-the-debt-ceiling-republicans-youll-be-glad-you-did/2021/09/10/046e31de-123c-11ec-baca-86b144fc8a2d\_story.html)

It’s unfortunate but true: Influential Republican politicians are playing another round of political chicken that could easily lead to a damaging brush with default on the national debt. There are better ways for them to rein in excessive Democratic spending plans that don’t endanger financial markets, taxpayers and their own political self-interest.

The U.S. is flirting with default this fall, as it did twice before in the past decade. For the government to pay its bills, Congress needs to increase the nation’s debt limit, an increasingly problematic legal requirement imposed a century ago. Unfortunately, it’s looking like this routine function of government will descend into a partisan fight. While there’s little doubt that the limit will eventually be raised, even merely pushing up against it would be damaging.

It’s hard to say precisely when the government will run out of money because the Treasury Department’s cash receipts fluctuate, particularly during the pandemic. Treasury estimates that it will run out of funds sometime in October.

Senate Republicans have made clear that they want no part in increasing the borrowing limit to raise the necessary cash. On Aug. 10, 46 of the chamber’s 50 Republicans released a letter informing Senate Democrats that they won’t vote to increase the debt ceiling.

Republican frustration is understandable. Since January, Democrats have been threatening to use a procedure known as “reconciliation” to pass a $3.5 trillion spending bill with a simple majority, rather than the 60-vote supermajority typically required in the Senate. GOP senators are asking: If reconciliation is available to pass, say, paid family leave and universal pre-kindergarten programs, why not force Democrats to use it to lift the government’s borrowing limit without Republican assent?

This question has answers. First, it’s unclear whether the reconciliation rules would allow a debt-ceiling increase to be passed as a stand-alone bill. The Senate doesn’t have a lot of experience using this procedure, and my conversations with top aides on Capitol Hill indicate a lot of confusion on this point.

Another suggestion is that Democrats include the debt-ceiling increase in their $3.5 trillion reconciliation bill, which would create and expand major climate and social programs and lacks any Republican support. But there’s no guarantee that the spending bill will be able to get the unanimous Democratic support needed to pass it by a simple majority, or that it would pass before the government would need to increase the borrowing limit to avoid default. House Speaker Nancy Pelosi closed the door on this option on Wednesday. In addition, it’s an odd strategy to push for including a must-pass provision in a bill that you don’t want to pass.

Republicans want to preserve the filibuster, the 60-vote threshold required for most legislation. Without it, Democrats could run the table, passing their agenda with a simple majority in the Senate. Refusing to raise the debt ceiling and forcing Democrats to find a way to increase it with a 51-vote majority will substantially weaken the GOP’s claim that the Senate can carry out basic functions of responsible governance with the chamber’s supermajority requirement in place. By refusing to help lift the debt ceiling, the GOP would be putting the legislative filibuster at risk.

There’s no chance that the debt ceiling won’t eventually be raised. The only question is how much damage is incurred along the way.

Even edging close to defaulting is dangerous, as recent experience shows. According to the Government Accountability Office, debt-ceiling brinkmanship pushed up interest rates in 2011, leaving taxpayers on the hook for an extra $1.3 billion in government borrowing costs in that year alone. The Bipartisan Policy Center estimated that the 10-year cost was roughly $19 billion.

Financial market volatility and measures of economic policy uncertainty spiked, and consumer confidence plummeted. Republicans — whose cultural agenda has strong appeal among higher-income, college-educated voters — should note that stock prices also fell, reducing the value of retirement and college-savings plans.

An even bigger threat than a close call would be temporarily defaulting. This scenario is made more likely because of multiple sources of intersecting uncertainty: precisely when the government will run out of cash, reconciliation rules, the fate of the $3.5 trillion spending bill, and whether Congress can pass a measure this month to prevent a government shutdown. It’s unclear how an effort to raise the debt limit might be intertwined with any of these. In all this activity and confusion, the unthinkable might happen.

Republicans should anticipate that if they push too hard, the stock market is likely to drop by thousands of points per day and they would take most of the blame. After one or two days, Congress would surely pass a debt-limit increase with overwhelming bipartisan support. In this scenario, what has the GOP accomplished?

Instead of refusing to lift the debt ceiling, Republicans should find something to trade with the Democrats. Disaster-relief funds. A larger defense budget. Or something. Find 10 Republican senators to join forces with 50 Democrats to meet the Senate’s supermajority requirement. Let the rest of the GOP — especially those who have to run for re-election in 2022 — off the hook.

This would be responsible governance, ensuring that the U.S. honors its financial obligations. It would constitute a strong argument for retaining the legislative filibuster. If done quickly, it would avoid the economic and political damage from brinkmanship. If done with a bill to keep the government funded, it would refocus public attention on the Democrats’ floundering efforts to pass President Joe Biden’s legislative agenda.

Quickly and quietly taking care of this is in the party’s — and the country’s — best interest.

#### If Biden fails to swing enough Reps on the CR now, chances of our impact spike

Scholtes et al 9-15-21 (Jennifer Scholtes, editor of the Budget and Appropriations Brief, has covered Congress and transportation security for POLITICO Pro, formerly covered homeland security for CQ Roll Call; and Caitlin Emma, covers the federal budget and congressional spending bills for POLITICO Pro, formerly spent five years as an education policy reporter for Pro, graduated from the University of Connecticut; “Dems’ fiscal endgame could require punting on debt limit,” POLITICO, 9-15-2021, https://www.politico.com/news/2021/09/15/democrats-debt-limit-decoupling-republicans-511836)

Disaster aid could be all the sweetener Democrats need to avert a government shutdown later this month — if they give up their biggest leverage in the high-stakes debt limit staredown.

In the next two weeks, President Joe Biden's party wants to fund federal agencies and fulfill his request for billions of dollars to help hurricane-battered states, all in one bipartisan funding bundle. But their best chance to make that work likely involves prolonging their biggest political gamble to date by leaving the debt limit to haunt them come October.

Droves of Senate Republicans this week reiterated that they remain against a bipartisan agreement to raise the nation's borrowing limit, even as the Treasury Department warns that a debt disaster could hit by mid-October. Even as that problem gets worse for Democrats, though, the urgency of disaster aid funding after Hurricane Ida slammed into red states across the Southeast is making it easier for them to win GOP votes to address the more pressing threat of a government shutdown on Oct. 1.

Top Democrats will soon have to settle a fiscal stumper: whether to tackle government funding separately from the debt limit, clearing one headache while almost certainly exacerbating another.

Sen. Susan Collins (R-Maine) said Tuesday that she “would certainly vote for” a government funding patch coupled with disaster aid.

Several other Republican senators said this week that they would consider joining Democrats in that vote: Sens. Bill Cassidy of Louisiana, Richard Shelby of Alabama, John Cornyn of Texas, Pat Toomey of Pennsylvania, Thom Tillis of North Carolina and Roger Wicker of Mississippi all said they would support — or won’t yet rule out — that option.

Sen. John Neely Kennedy is an unequivocal yes on disaster aid. And the Louisiana senator said he has already warned the White House that tying debt limit action to the spending package will tank the whole thing.

“I’m going to vote for it even if the debt ceiling is in it. But I’m telling you it’s not going to pass, and everybody knows that, including President Biden,” Kennedy said in an interview on Tuesday. He was one of four Republican senators to not add their name to a letter last month that vowed to oppose a future increase in the borrowing limit, even if tied to government funding.

“The president looked me in the eye and said, ‘We've got your back.’ And if he believes this is having our back, he's the only person in the Milky Way who believes that,” Kennedy added. “They know darn well that this [continuing resolution], with a debt ceiling increase on it, is not going to pass. So that tells me that they're not in good faith about helping my people."

Democratic leaders stress that no decisions have been made on attaching the debt limit to government funding while they weigh their options for dealing with the cap on the nation’s ability to borrow cash.

Some Democrats privately believe the party will end up passing a bipartisan continuing resolution that funds disaster aid and other presidential priorities, leaving the debt limit for another day. But first, they want to force the GOP to vote against a package that pairs government funding with a measure to avert debt default, seeing the potential for a messaging win.

“If we don’t get Republican support … they’re going to jeopardize the credit of the United States,” Sen. Ben Cardin (D-Md.) said of the GOP. “We have limited options. I’m all for dealing with it any way we can to get it done.”

Democrats have so far railed against Republicans for playing political chicken with the debt limit, which could cause economic chaos if breached. GOP leaders say they won’t cooperate on the issue while Democrats pursue trillions of dollars in social spending without Republican votes, however.

Wicker, whose state of Mississippi was also hit hard by Hurricane Ida, said a Democratic decision to separate the debt limit from government funding and disaster aid “would certainly remove one stumbling block.”

“It would absolutely depend on the terms of the continuing resolution, but it’s conceivable” that Republicans would support the stopgap with Biden’s requested cash for storm damage, he said.

Asked if he would support a standalone stopgap spending bill with disaster aid, Tillis said: “Yeah. Again, if it’s separate from the debt ceiling, we definitely have anticipated needs down in the Southeast as a result of the storm damage.”

Both parties have worked together in recent years to suspend the debt ceiling, most recently in August 2019, when the Trump administration and Congress agreed to suspend the limit for two years in a broader budget deal.

“Nobody — nobody — is allowed to hold our economy hostage,” said Senate Finance Chair Ron Wyden (D-Ore.). “We consistently assisted President Trump in ensuring that wasn’t the case, and that principle is still valid.”

Treasury Secretary Janet Yellen has warned of “irreparable damage to the U.S. economy” as soon as next month, especially if Congress waits until the last minute to deal with the debt limit. Other experts have estimated that lawmakers may have until mid-November to act.

That small window of extra time could fuel arguments in favor of funding the government now, while tackling a higher-stakes debt cliff later — although a bipartisan solution is far from guaranteed.

#### Risk’s increasing by the day

Torgerson et al 9-9-21 (Thomas R. Torgerson, Managing Director, Co-Head of Sovereign Ratings, DBRS Morningstar; and Nichola James, Managing Director, Co-Head of Sovereign Ratings, DBRS Morningstar; “U.S. Debt Ceiling: Playing a Dangerous Game (Again),” DBRS Morningstar, 9-9-2021, https://www.dbrsmorningstar.com/research/384244/us-debt-ceiling-playing-a-dangerous-game-again)

Difficult political negotiations often come down to the wire in the United States and have always in the past resulted in a compromise before running into any constraints on meeting debt obligations. Neither party wants to deal with the repercussions of missed payments on debt or any other federal government obligation. Furthermore, at this juncture, Democrats have narrow control over the House and Senate and have the ability to pass a debt ceiling increase in spite of Republican opposition, under reconciliation rules. This distinguishes the current situation from prior episodes in 2011 and 2013.

However, current plans are to keep the debt ceiling increase separate from the budget legislation. This strategy would require Republican support, which at present appears unlikely to be forthcoming. Absent a shift in strategy from at least one of the two parties, the risk of miscalculation grows with every passing day, and may ultimately result in the U.S. rating being placed under review, similar to our actions taken in 2013.

“The U.S. retains some exceptional credit strengths, and its ratings are underpinned by its high degree of economic, institutional and financial resilience,” notes Thomas R. Torgerson, Co-Head of Sovereign Ratings at DBRS Morningstar. “However, DBRS Morningstar considers brinksmanship with the debt ceiling to be a dangerous game - atypical of a 'AAA' rated sovereign.”

### AT: Thumper – T/L

#### PC may be stretched to the breaking point, BUT only plan’s fiat opens a new partisan battlefront

MIN News 9-16-21 (MIN News, up-to-the-minute news with a focus on global news with an impartial perspective, “The eve of the U.S. Riot,” 9-16-2021, https://min.news/en/world/fdc7c0db566ff0f75dadb19e71f8212b.html)

According to the latest media report on Wednesday (September 8), as US President Biden has no new measures to express the renewal, on September 6 this year, the government's fixed weekly aid payment of 300 US dollars has expired and the disbursement has been terminated. .

However, this Tuesday (September 7), the White House of the United States said that each state can consider whether to extend the grant period according to their own circumstances. If some states want to provide welfare payments to those in need, the White House will continue to support it.

In fact, the United States has also tried before the relief fund expires, but either the relief fund has a smaller scope of impact, or the new bill will be extended soon after it expires. The suspension of unemployment assistance has affected more than 11 million people in the country, including 4.2 million casual workers and 3.3 million long-term unemployed.

So why did the United States not introduce a new bill to extend the bailout when it expired? That's because the US government is working hard to promote the passage of the $1 trillion infrastructure bill and the $3.5 trillion budget to further boost the country's economy. In addition, the country is burdened with 28.7 trillion U.S. dollars in debt and is facing the risk of debt default. There is really no extra energy and money to solve the problem of unemployment assistance.

We must know that the current labor participation rate in the United States is sluggish. As of the end of June this year, there were 10.1 million employment gaps in the country. If relief payments continue, it will only further hinder the release of the country's labor force. It is reported that among the 50 states in the United States, 24 states have stopped distributing benefits.

However, this is not a good solution to the employment problem. If the more than 10 million employment gap can be filled by someone, it would have been filled long ago. Those in need of government relief do not have many labor skills. There are a large number of idlers, drug addicts and anti-social workers in the United States. These people are unwilling to go to work. They just ask for money from the government. Once this group of people cannot get relief from the government, they will naturally go to society to rob them. These poor Americans will have their lives left, and they will become Americans. Serious instability factors.

This is in sharp contrast to the Biden administration's attitude towards the “suspended deportation order” in early August. American housing tenants face the risk of being evicted from their housing if they default on rent. Since the outbreak of the coronavirus pandemic, a large number of tenants have struggled to pay rent on time. The Centers for Disease Control and Prevention (CDC) issued a "suspended eviction order" last September, saving millions of tenants from going out.

At the end of July this year, the "suspended deportation order" expired, and the progressives in the Democratic Party unanimously asked Biden to postpone. The Biden administration also made active efforts for the postponement and successfully extended it for two months. Although the Supreme Court ended the “suspended deportation order” with a 6-3 ruling at the end of August, the then Biden administration did at least make it as long as possible.

Since major states suspended relief payments, many U.S. citizens have expressed dissatisfaction, because there is a long transition period from looking for a job to getting a salary, and rushing to stop the relief payments is detrimental to the normal life of American citizens. Influence. Moreover, some American citizens, because of the sequelae of pneumonia, are unable to perform high-intensity work on their own and stop distributing relief funds. These citizens can only find unsafe jobs with salaries far below the cost of living.

In order to help American citizens through the embarrassing period, the major states have also given 30 days of transition time, but many people say that 30 days are not sufficient at all. Sometimes it may take two months to find a suitable job. During this period, the unemployed people who have no economic income will inevitably lose their income, which will have a serious impact on their lives. And they have to pay a lot of expenses in the past two months, not only for living expenses, but also for some mortgage payments. This government decision will destroy the lives of many people.

And now, the Biden administration must promote the smooth passage of the bipartisan cooperation infrastructure bill and the US$3.5 trillion budget before the end of September to boost Biden's repeated low support rates after the epidemic rebounded and Afghanistan's defeat. At the same time, the Democrats must negotiate with the Republicans in Congress to raise the debt ceiling and avoid government shutdowns. The tight timetable and severely shrinking political capital have made the Biden administration unable to open up a new battlefield on the issue of unemployment benefits.

### Antitrust Thumper

#### No thumper – their ev is about proposed bills and concedes it will be a long road – the best argument they get is a biden signal link from 2 months ago that’s all priced in to uniqueness and you should prefer issue specific anyway

Msu=yellow

Ballard Spahr 7/1 (Ballard Spahr LLP, “Congress, White House Signal Increased Antitrust Enforcement”, <https://www.jdsupra.com/legalnews/congress-white-house-signal-increased-3294645/>, July 1, 2021)

Summary Increased antitrust enforcement is a hot topic in the nation’s capital this summer, with the House Judiciary Committee approving a package of legislation that would reshape the antitrust laws last week and an executive order aimed at more aggressive enforcement expected from the White House in the coming weeks. The Upshot The package of antitrust legislation, which advanced out of the Judiciary Committee with support from most Democrats and a few Republicans, broadly targets “Big Tech” with a series of changes to the legal landscape in order to curb their perceived power. Given the cross-partisan mix of support and opposition in committee, the fate of the legislation in the House and the Senate remains uncertain. On a separate track, the White House is considering an executive order that would direct various federal agencies to update their antitrust guidance, suggesting specific actions that the agencies could take to ramp up efforts to increase competition in a wide variety of markets. The Bottom Line While any antitrust legislation faces a long road through Congress, the Executive Branch has signaled its intent to change the regulatory landscape and ramp up antitrust enforcement in a wide range of markets. Attorneys in Ballard Spahr’s Antitrust and Competition and Government Relations and Public Policy group are available to advise businesses on the effects of these changes on their current practices and competitive arrangements. Increased antitrust enforcement is a hot topic in the nation’s capital this summer, with the House Judiciary Committee approving a package of legislation last week that would reshape the antitrust laws and an executive order aimed at more aggressive enforcement expected from the White House in coming weeks. The package of antitrust legislation, which advanced out of the Judiciary Committee with support from most Democrats and a few Republicans, broadly targets “Big Tech”—companies such as Apple, Amazon, Facebook, and Google that legislators contend have substantial market power—with a series of changes to the legal landscape which would curb their power. The six bills include: H.R. 3826, which aims to prevent large online platforms from completing mergers that would enhance monopoly power; H.R. 3825, which aims to prevent such platforms from using their market position to distort competition in markets relying on that platform; H.R. 3816, which would create a nondiscrimination regime for such platforms—i.e., barring conduct that advantages the platform operator’s products over other businesses; H.R. 3849, which gives the Federal Trade Commission new authority to promulgate rules to promote interoperability—the extent to which systems and devices can share and interpret data—and data portability; H.R. 3843, which would increase filing fees on large mergers in order to provide resources to the Department of Justice and Federal Trade Commission; and H.R. 3460, which would include antitrust actions filed by state attorneys general in the provision excepting antitrust actions filed by the United States from the multidistrict litigation venue provision, 28 U.S.C. § 1407(g). The package of bills now heads to the full House for debate and consideration. Given the cross-partisan mix of support and opposition, the fate of the legislation there remains uncertain—let alone in the Senate, where 60 votes would be needed to overcome a potential filibuster. While those bills await consideration, Politico reports that the White House is considering an executive order that would direct various federal agencies to update their antitrust guidance, suggesting specific actions that the agencies could take to ramp up efforts to increase competition in a wide variety of markets. Specifically, reports indicate that the order would suggest that the Department of Justice and FTC adopt revised guidance on corporate mergers, including for vertical mergers—mergers between companies that are not direct competitors. The order also would target deals between financial institutions and competition at airports, among other areas. However, the executive order is yet to be presented to President Biden, and a spokesperson said in a statement that he has not made any final decisions. The move is part of a broader pattern of a more aggressive approach to antitrust taken by the Biden administration, alongside the appointment of antitrust scholar Lina Khan as FTC chair. President Biden is yet to appoint a new head of DOJ’s Antitrust Division, which would send a further signal of the administration’s intentions in the area. While any antitrust legislation faces a long road through Congress, through its appointments and an anticipated executive order, the Executive Branch has signaled its intent to change the regulatory landscape and ramp up antitrust enforcement in a wide range of markets.

### 2NC---Link---AT: Antitrust Thumpers

#### Bills won’t pass in the squo – because there’s *no consensus on Anticompetitive business practices*

* Our link prices-in opposition of key GOP Senators;
* And lackof Dem unity;
* Optimism from *House* Judiciary Comm = irrel - wont’ get 10 crossover votes *in the Senate*;

Newton ‘21

Casey Newton is a Verge contributing editor. He is the founder and editor of Platformer, a daily newsletter about Big Tech and democracy. He holds a B.S. in Journalism, Northwestern University – “WHY THE TECH ANTITRUST REFORM BILLS ARE STRUGGLING TO MOVE FORWARD” - The Verge - Jun 24, 2021 - #E&F - https://www.theverge.com/2021/6/24/22548317/tech-antitrust-reform-bills-congress-democrats-republicans-editorial

But at the risk of sounding incredibly naive about the political process, this is not really the debate we just had during a marathon bill markup session in the judiciary committee.

The House bills all have Republican co-sponsors, and *appear* to enjoy some support in that delegation. But key Republicans have so far refused to engage with any of these bills on a policy level, insisting instead that tech reform begin (and possibly end?) with prohibitions on “censorship.”

Galled by the removal of former President Trump from Facebook, Twitter, and other platforms, and perhaps energized by Florida’s recent passage of a (likely unconstitutional) bill that would make such content moderation illegal, some Republicans want to throw out the entire process. Members of Congress in this camp include the House minority leader, Kevin McCarthy, and Rep. Jim Jordan, the ranking Republican on the Judiciary Committee.

This piece from Politico this week gives you some flavor of the discussion:

Jordan has been publicly pushing against the bills, while McCarthy has said he’s planning to unveil his own tech reform agenda.

“We’ve got a beef with all Big Tech in the sense of the censorship they have of conservatives now,” Jordan told Fox Business on Tuesday. Jordan added, however, that the antitrust bills coming to a vote are sponsored by “four impeachment managers” — questioning top Democrats’ ability to write legislation that conservatives can favor.

Set aside for a moment the fact that Trump was removed from these platforms because he was using them in an effort to overturn the results of a fair election, the thing to highlight here is that Republican leadership’s concerns have nothing to do with “competition” per se. Instead, their outrage is rooted in the idea that anyone else might have power over their speech.

We know what happens when elected officials are allowed to post whatever they want online — they attack minorities, they manufacture influence operations against their own citizens, they chip away at the foundations of democracy. (This has been the story in India for the past year, and if you assume it is a preview of the next Republican administration here in the United States, as I do, it’s quite chilling.)

For these Republicans, then, the goal is not actually to make platforms like Facebook and Twitter less powerful — it’s to ensure that they can use those platforms’ power to achieve their own ends, and to make it illegal for anyone to stop them. When Trump shut down his blog 29 days after starting it, it wasn’t in protest of platforms’ power — it was out of the frustration that he no longer had access to it.

The Politico story and other reporting on the subject suggests that Democrats will struggle to find 10 Republicans in the Senate to sign on to most of these bills, and perhaps to any but the one providing extra funding for antitrust enforcement.

For as long as the parties have spent agreeing that somebody ought to do something about Big Tech, in important ways they are still talking past one another.

I mean, the Democrats aren’t exactly all in agreement, either.

There is a split between progressive and moderate Democrats in just how far these bills should go to reshape the economy. And some bills go quite far — Rep. Pramila Jayapal’s Ending Platform Monopolies Act would permit the government to sue big platforms to break them up — Amazon could be forced to divest itself of its logistics network and of Amazon Web Services, for example; Facebook could have to spin out Instagram and WhatsApp.

That has made some Democrats uneasy, as Leah Nylen and Cristiano Lima reported Wednesday in Politico:

A growing number of moderate Democrats are also ~~voicing~~ (expressing) concern about the proposals under consideration this week, which they warn could have a vast impact on the U.S. economy. That includes at least two key California Democrats that sit on Judiciary, Zoe Lofgren and Lou Correa, who will have a say Wednesday on which bills make it out of the panel and which don’t.

“My concern is that this legislation will essentially push away investment in this area, it will stifle the economics behind it, the job creation,” Correa, whose district includes parts of Orange County, said in an interview Tuesday.

I think these concerns are fair? It’s remarkable that, after years of deliberations, we still don’t know exactly how the government would proceed if these bills became law. Would they sue each platform simultaneously and force them to divest most of their acquisitions? Would they begin new, more targeted investigations of the platforms before they acted? And what would the platforms look like after they were through?

A coalition of advocacy groups, most supported by the big tech platforms, wrote in a letter to Congress that: “Rep. Cicilline’s bill would ban Google from displaying YouTube videos in search results; ban Alexa users from ordering goods from Amazon; block Apple from preinstalling ‘Find My Phone’ and iCloud on the iPhone; ban Xbox’s Games Store from coming with the Xbox; and ban Instagram stories from Facebook’s news feed.”

Those would represent enormous changes to the economy, and yet Congress — which rarely discusses individual products when talking about these issues — has little to say about the specifics. Given that consumers generally do love all these products, that seems risky and ill advised.

I am trying not to be a regulatory nihilist here. Like I said, I think aspects of these bills could do some good. I hope the FTC and DOC get more funding. I hope Apple enables sideloading on iOS, whether or not Congress forces it to. I hope future mergers get more scrutiny, particularly those related to next-generation platforms, rather than last-generation ones.

But two big concerns hang over everything else here. One is that in a Congress where a small handful of Republicans can derail almost anything, there are seemingly more than enough here to stop most of what has been presented in its tracks. And two is that as grateful as I am for the bipartisan group’s work here, it’s hard to shake the feeling that they both took too long to act and bit off more than they can chew.

#### Anti-Trust Bills won’t pass now – this prices-in bipartisan support and still proves obstacles in the Senate.

Durkee ‘21

not James Donald Durkee – but Alison Durkee – who covers breaking news at Forbes. The author previously covered politics and news for Vanity Fair and Mic – “Facebook Wins Antitrust Lawsuits — At Least For Now” - Forbes - Jun 28, 2021 - #E&F -https://www.forbes.com/sites/alisondurkee/2021/06/28/facebook-wins-antitrust-lawsuits----at-least-for-now/?sh=42ce2f4715be

Antitrust legislation that could result in big tech companies like Facebook potentially getting broken up is moving forward in Congress, with the House Judiciary Committee advancing legislation last week that would prohibit companies from owning businesses that present a conflict of interest, stop tech platforms from advantaging their own services over those of competitors and give regulators more of an advantage over the tech companies. Those bills likely face an uphill battle in a closely divided Senate, however, even as both Republicans and Democrats have advocated against tech companies’ growing power.

#### Won’t pass – Dems and GOP only agree on broadest-strokes - not the fine-details or underlying motivations.

Chakravorti ‘21

Bhaskar Chakravorti is the Dean of global business at Tufts University’s Fletcher School of Law and Diplomacy. He is the founding executive director of Fletcher’s Institute for Business in the Global Context, where he established and chairs the Digital Planet research program. “Lina Khan Has Her Own Antitrust Paradox” – Foreign Policy – July 7th - #E&F - https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/

To create the new agency, Congress needs to stop its political bickering and unite. The problem is although there is seeming bipartisan support for taking action on Big Tech, unity is a mirage;

Republicans and Democrats have different reasons for wishing to limit the powers of tech companies. When the new agency is up and running, it is essential to have fresh-thinking and innovative leaders involved. Put a reformer like Khan in charge of that. Her talents are more needed in an agency focused on the digital industry than on “funeral director practices, robocalls, and labeling hockey pucks.”

#### Won’t pass – *vague definitions* block bills from moving forward.

MacCarthy ‘21

Mark MacCarthy is a Nonresident Senior Fellow in Governance Studies, Center for Technology Innovation, Brookings Institute .He is also adjunct professor at Georgetown University in the Graduate School’s Communication, Culture, & Technology Program and in the Philosophy Department. He teaches courses in the governance of emerging technology – “Facebook's FTC court win is a much-needed wake-up call for Congress” - Brookings - July 7, 2021 - #E&F – https://www.brookings.edu/blog/techtank/2021/07/07/facebooks-ftc-court-win-is-a-much-needed-wake-up-call-for-congress/

As the House bills move forward, the corporate restructuring bill needs to be clarified and harmonized with the nondiscrimination bill. The most logical way for this to happen is to give the FTC the authority to impose increasingly stringent measures on platforms, starting with nondiscrimination rules, moving to structural separation, and finally to line of business restrictions if the less stringent measures fail to mitigate unfair business conduct.

The ACCESS Act bypasses the current antitrust dogma that monopoly businesses have no duty to deal with competitors by imposing data portability and interoperability requirements on covered platforms. The idea is to let users take their information with them to another provider and allow messages or posts originating on one platform to appear to users on other platforms. The bill might also allow merchants to simultaneously list their products on several e-commerce platforms. The models here are once again drawn from the effort to introduce competition into the telecommunications industry, where the FCC set up and supervised requirements for carriers to provide for number portability and for technical interconnection arrangements among competing carriers. Under the bill, the FTC must set up technical committees to help it determine what these requirements mean in practice for specific digital businesses.

Much work needs to be done on these bills before they are ready to move forward, and there is some indication that further progress in the legislative process will be held up until improvements are made. This is all for the good. The speed with which the bills moved through the House Judiciary Committee meant that there was little time for thoughtful amendments.

### AT: Biden XO Thumper

#### Not a thumper---didn’t do anything.

Brooks et al. 21 (H. Holden Brooks, Partner at Foley & Lardner LLP, A lot of other authors, “President Biden’s Executive Order on Competition Could Mean Broad Changes Across a Range of Industries,” 07-14-21, <https://www.foley.com/en/insights/publications%20/2021/07/biden-executive-order-competition-broad-changes>)

On Friday, July 9, 2021, President Biden issued a sweeping Executive Order1 that could have far-reaching implications for businesses across a broad spectrum of industries. The Executive Order takes a government-wide approach and includes 72 initiatives by over a dozen federal agencies, with the stated aim of addressing competition issues across the nation’s economy to protect consumers and workers and bolster innovation.2

Significantly, the Executive Order does not immediately put any specific policies into effect or establish any requirements or prohibitions for businesses or other nongovernmental entities. Rather, the Executive Order directs and encourages federal regulators to consider policy initiatives, conduct a series of reviews, and craft new rules to implement the overarching policy goals of the Administration – a process that could take many months, if not years, to unfold. Nevertheless, the ramifications are likely to be significant for businesses of all types, and some policy initiatives could necessitate changes earlier than others. Legal challenges inevitably will also arise from agency actions taken as a result of the Executive Order.

#### Biden’s XO is perceived as ineffective and cautious

**Silverman,** 7-9-**21**

(Jacob, “Biden Wants to Tame Big Tech With a Thousand Paper Cuts,” accessed 8-6-21, <https://newrepublic.com/article/162940/biden-executive-order-big-tech-monopoly>) JFN

On Friday, **the White House announced a** potentially important, if **modest, effort to** further **tamp down the power of the technology industry**. This time the instrument is **an executive order**—the kind of wide-ranging declaration that often gets called “sweeping” or “major,” though **its efficacy may take years to gauge**—that covers everything from competition in the economy to drug prices to reforming a tech sector that is defined by a handful of seemingly unstoppable titans. Offering a mix of general recommendations, requests for action from other government agencies, and new administration policies, the Executive Order on Promoting Competition in the American Economy may be just what our overconsolidated economic system needs. But in tackling the power of a tech sector that has not only wrested control of the economy but remade it in its own data-hungry image, **the Biden administration is** still **throwing pebbles at its enemy’s parapets**. The tech industry has had 20 years to establish a stranglehold over our personal data, attention, and consumer choice. To tackle these problems, we need more, much more. Despite promising to take on the power of Big Tech, President Joe **Biden** and his administration **have** so far **taken a cautiously incrementalist approach**. He’s appointed tough industry critics like Lina Khan to be commissioner of the Federal Trade Commission, but he has yet to name a head of the Justice Department’s antitrust division, a key role for any future enforcement action. In Congress, Democrats have introduced six smallish antitrust bills, but their path out of the House is murky, as ongoing disputes between Republicans and Democrats over how to fight this legislative battle mean that the final bills could look much different than they did in committee—if they make it to a floor vote at all. (It doesn’t help that some Silicon Valley–adjacent Democratic politicians, like Representative Ted Lieu and Representative Ro Khanna, have been less than supportive of the bills.)

### 2NC---Link---Generic

#### Reform efforts face fierce opposition that requires political capital.

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

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

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

#### Antitrust reform necessarily *burns Biden’s PC* and trades-off with other legislative priorities.

* Bipart link turn wrong – general consensus loses-out to details like what will be included, excluded, etc.

Folio ‘21

et al; Joe Folio – Counsel at Morrison-Foerster- Before joining the firm, Joe most recently served as Chief Counsel for the U.S. Senate Committee on Homeland Security & Governmental Affairs, where he advised on all issues falling within the committee’s broad jurisdiction, including cybersecurity, border security, domestic terrorism, election security, supply chain security (including 5G policy), and reforming the National Emergencies Act. “Antitrust Update: Up and Down the Avenue” - Morrison-Foerster- 22 Mar 2021 - #E&F – ellipses in original - <https://www.mofo.com/resources/insights/210322-atr-update.html>

Meanwhile, on Capitol Hill …

Down the avenue, Congress is debating whether to provide the agencies with additional tools and resources. But how realistic are the prospects for legislative reform ?

In short, although the prospects for sweeping legislative reform of the antitrust laws are dim, targeted reforms appear increasingly likely, especially increased funding for the agencies. In October 2020, the House antitrust subcommittee concluded a year-long bipartisan investigation into these issues, and the House Democrats published a lengthy report detailing their findings and making recommendations for reform. Notably, the House Republican response identified several areas of agreement, including “providing antitrust enforcement agencies with the necessary resources.” [3] House Republicans also made it clear that they too are concerned about tech companies “using ‘killer acquisitions’ to remove up-and-coming competitors from the marketplace,” and that the burdens of proof for mergers and predatory pricing cases need to be reevaluated.[4] On March 18, 2021, however, the Republican ranking member on the committee reiterated a shared interest in reforming the evidentiary burden of proof in merger cases, which he described as having become “essentially insurmountable” and “a grant of near total immunity to big tech companies.” Although a path to agreement on more substantive issues typically has many obstacles, reforming the burden of proof in certain instances may be emerging as the most likely candidate for significant legislative action.

In the Senate, on February 4, 2021, newly installed antitrust subcommittee chair Senator Amy Klobuchar (D-MN) introduced a bill that would overhaul existing antitrust laws. Among other reforms, it would lower the government’s burden of proof to block a merger, shift the burden of proof in certain cases and require the merging parties to justify the deal, and increase funding for both the DOJ Antitrust Division and the FTC. At the subcommittee’s March 11, 2021 hearing related to the bill, subcommittee ranking member Senator Mike Lee (R-UT) (who promptly released a statement noting his opposition to Ms. Khan’s nomination) made it clear that he firmly opposes “a sweeping transformation of the antitrust laws.” Throughout the hearing, however, there appeared to be bipartisan support for taking some sort of action to address these issues, and at the very least to provide increased funding to the DOJ and FTC. Even Senator Lee, who recently introduced a bill that would combine the DOJ and FTC to avoid inefficiencies in antitrust enforcement, acknowledged that agency leaders need the resources that are necessary to vigorously enforce antitrust laws.

So, what does it all mean?

In these circumstances, the most likely outcome appears to be antitrust officials creatively using their existing tools to enhance enforcement while not so quietly pressing Congress for additional assistance. On March 16, 2020, acting FTC Chair Rebecca Slaughter advocated for increased scrutiny of mergers between pharmaceutical companies. She also told the House antitrust subcommittee that the agencies “should consider withdrawing” the guidance for “vertical” mergers issued during the last administration to allow for more aggressive enforcement.[5] But at the same time, FTC Commissioner Noah Phillips explained that the agency would not be able to challenge certain deals without more funding. The Biden administration and the agencies will need to determine how to square those positions. Also, even assuming Congress could provide the agencies with additional funding quickly (on top of the additional $20 million Congress provided to the FTC in December 2020), using that funding to hire additional attorneys will take time.

The path for meaningful legislative reform remains extremely complicated. The prospect for reform depends significantly on whether members of Congress, congressional leadership, and the Biden administration are willing to expend the time and political capital necessary to pass a reform bill (which also assumes the relevant parties can agree on what should be included—or, perhaps more importantly, excluded—from that bill). In light of competing priorities, the absence of key personnel, and the already narrowing congressional calendar (major non-appropriations legislation typically will not move after July in an election year (2022)), those prospects appear to be slim. In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.

### 2NC---Link---AT: Bipart

#### Bipart link turn wrong – the illusion of “consensus” falls apart at game-time. In *practice*, the GOP wants highly-mild approaches.

Browdie ‘21

et al; Megan Browdie is a Partner at The Cooley Law Firm Megan is recognized by Super Lawyers and LMG’s Expert Guides as a “Rising Star” in antitrust and by Who’s Who Legal as a “Future Leader.” Megan was also recognized by the American Bar Association as a Top 40 Young Lawyer, which recognizes lawyers who “exemplify a broad range of high achievement, innovation, vision, leadership, and legal and community service.” At Georgetown University Law Center, Megan was the executive notes editor of the Georgetown Journal of Legal Ethics and interned at the Bureau of Competition at the Federal Trade Commission. Georgetown University Law Center, JD, 2010 - “BIDEN/HARRIS EXPECTED TO DOUBLE DOWN ON ANTITRUST ENFORCEMENT: NO “TRUMP CARD” IN THE DECK” - Concurrences – #1 - Feb 15, 2021 - #E&F – modified for language that may offend - available at (scroll down): https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#abbott

VI. DRAMATIC ANTITRUST LEGISLATION UNLIKELY, THOUGH EXPECT SOME LEGISLATIVE MOVEMENT

34. Progressives in Congress are pushing a more aggressive antitrust enforcement agenda. As discussed above, the Subcommittee on Antitrust Law of the House Judiciary Committee recently issued a report calling for the antitrust laws to be updated. The Digital Competition Report proposed several reforms, including “[s]trengthening Section 7 of the Clayton Act, including through restoring presumptions and bright-line rules, restoring the incipiency standard and protection nascent competitors, and strengthening the law on vertical mergers.” The Committee also proposed “[s]trengthening Section 2 of the Sherman Act, including by introducing a prohibition on abuse of dominance and clarifying prohibitions on monopoly leveraging, predatory pricing, denial of essential facilities, refusals to deal, tying, and anticompetitive self-preferencing and product design.” [39]

35. Democrats have also been active on the Senate side. For example, Democratic Senator Klobuchar has also proposed legislation, the Anticompetitive Exclusionary Conduct Prevent Act, that, among other things, would amend the Clayton Act to prohibit “exclusionary conduct,” defined as conduct that “presents an appreciable risk of harming competition” and would create a presumption that conduct is exclusionary if undertaken by a company with a greater than 50% share in the relevant market. [40]

36. While House Republicans released a minority response largely supporting Democrats’ findings, they expressed concerns about sweeping solutions and instead advocated for refinements to current law. [41] For example, regarding nascent competition, the minority response to the Digital Competition Report explained that “Congress should look to reinvigorate the antitrust enforcement agencies’ ability to conduct proper oversight and bring enforcement cases based on potential competition doctrine. This may require legislation restoring the potential competition doctrine to its original Congressional intent while freeing it from its current overly restrictive standards.” The minority response also agreed that “[c]onservatives should consider supporting very limited legislative changes to provide consumers with a data portability standard that is similar to transferring cell phone numbers.”

37. There is also pending legislation introduced by Republicans that would more closely align FTC and DOJ processes (the SMARTER Act) and that would combine the agencies (the One Agency Act).

38. Current leadership at the agencies appear to agree with the Republicans’ more cautious approach. For example, Chairman Joe Simons, while having touted himself as “responsible for overseeing the re-invigoration of the FTC’s non-merger enforcement program” during his tenure as director of the FTC Bureau of Competition under Bush, has pushed back on these “expanded” theories of antitrust harm. For example, he argued in January 2020 that “U.S. antitrust laws are sufficiently robust to handle competition problems as they arise. Over the years, antitrust laws have proven to be very flexible and resilient in enabling enforcers to challenge conduct that harms competition in a broad range of markets. These laws have proved themselves effective even as the economy evolved with technological progress.” [42]

39. Given this disagreement, and that the Democrats, at best, will have a very thin majority in the Senate, we anticipate some modest modifications to the antitrust laws but expect serious pushback to substantial overhauls of the system or laws.

Also in generic block

#### Antitrust reform *burns Biden’s PC*---even if the plan is popular, he’ll have to justify what is excluded from the bill.

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The path for meaningful legislative reform remains extremely complicated. The prospect for reform depends significantly on whether members of Congress, congressional leadership, and the Biden administration are willing to expend the time and political capital necessary to pass a reform bill (which also assumes the relevant parties can agree on what should be included—or, perhaps more importantly, excluded—from that bill). In light of competing priorities, the absence of key personnel, and the already narrowing congressional calendar (major non-appropriations legislation typically will not move after July in an election year (2022)), those prospects appear to be slim. In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.

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

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

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

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

#### Biden’s political capital is finite

**Stanage, 1-24**-21

(Niall, “The Memo: Biden gambles that he can do it all,” accessed 1-28-21, <https://thehill.com/homenews/the-memo/535502-the-memo-biden-gambles-that-he-can-do-it-all>) JFN

But **there is also the question of political capital, which tends to be finite. If Biden proves to have less heft than he thinks to pass legislation, he will disappoint key constituencies**.

#### Spent PC cannot be recovered

**Brown, 3-5**-21

(Hayes, “President Joe Biden's first 100 days aren't over yet. It's still OK to criticize him,” accessed 3-9-21, <https://www.msnbc.com/opinion/president-joe-biden-s-first-100-days-aren-t-over-n1259688>) JFN

**Popularity in the polls is often used as a stand-in for "political capital" — the idea that politicians have a pool of goodwill that can be depleted** or replenished. And **early in a president's term is when that pool tends to be at its highest and ready to be spent,** like a credit card with zero dollars on its balance. **Biden** already **faces questions about how he wants to spend that capital**, especially **once the stimulus bill passes**. Immigration reform advocates, for example, are "frustrated" that Trump-era policies to detain and deport families who arrive at the southern border because of Covid-19 concerns are still in place. Meanwhile, some Democrats are upset that Neera Tanden's nomination to head the Office of Management and Budget tanked — but for differing reasons. In one corner, you have the people who think that the opposition to her was sexist and tinged with anti-Asian racism and that Biden should have fought harder for her; in the other, those who wonder why the administration spent capital on defending her nomination at all given her combativeness toward Republicans and other Democrats alike. Beyond the immediate challenges, and there are many, **now is when priorities are being set** for the rest of the term. Campaigns are malleable; their focuses can shift more easily, lacking as they are in the power to enact their proposals. In contrast, **governing is chiseled into stone — there's no getting back time spent on issues that are of lesser importance in the eyes of the White House**.

#### Link only goes one way because the media will cover the costs of the plan but not the benefits

**Rubin**, 5-9-**21**

(Jennifer, “Biden understands the pace of governance, the media not so much,” WP, <https://www.washingtonpost.com/opinions/2021/05/09/biden-understands-pace-governance-media-not-so-much/>) JFN

It’s not just on the economy that **the media exhibits a remarkable degree of overreaction coupled with a short attention span and refusal to grasp nuance**. **The border is a mess! This could sink Biden! Actually**, on Tuesday, Psaki noted, “At the end of March, there were more than 5,000 children in Customs and Border Protection Patrol stations. Today, that number is approximately 600.” She added, **“The amount of time children spend in CBP facilities is down by 75 percent** — from 131 hours at the end of March to under 30 hours now.” **Not a lot of front-page stories on the remarkable turnaround at the border**, huh? But the causes that prompt thousands to flee the Northern Triangle are intractable; Vice President Harris has begun her own dogged diplomacy to address economic deprivation, corruption and violence.

#### Winners win doesn’t apply to Biden

**Subramanian and Garrison, 3-7**-21

(Courtney and Joey, “'Dinner table' politics: Why Joe Biden ditched bipartisan dealmaking to pass his COVID-19 relief bill,” accessed 3-8-21, <https://www.usatoday.com/story/news/politics/2021/03/07/covid-19-bill-biden-chooses-dinner-table-politics-over-bipartisanship/6892438002/>) JFN

Despite **the relief plan**'s popularity outside the Beltway, **it is unlikely that momentum from its passage will hurtle Biden into future legislative wins**, Howell said. **“The idea that a legislative win begets a subsequent legislative win in this environment is** probably **asking for too much**,” he said, noting **the prospect of passing COVID-19 relief was higher than more hot-button issues** like immigration or health care. A legislative defeat would have raised questions about Biden’s ability to pass any meaningful legislation, but **its passage won’t be a “springboard to the production of all kinds of landmark legislation – far from it**," Howell said.

#### Victories don’t give Biden more political capital

**Drezner**, 3-30-**21**

(Daniel, “Biden’s brand of bipartisanship,” WP, accessed 4-10-21, <https://www.washingtonpost.com/outlook/2021/03/30/bidens-brand-bipartisanship/>) JFN

**The paradox for Biden is that the more successful he is** at addressing the pandemic and the economy, **the more difficulty he could encounter in building bipartisan coalitions to address other problems**. Political Science 101 would suggest that if Biden gets credit for ending the pandemic and restoring a strong economy, that popularity should translate into greater political capital for other problems in the queue. Political Science 301 offers a cautionary warning: **Solved problems fade from view**. Biden is appropriately addressing the issues voters care about. But **if the pandemic and the economy evolve as expected, voters will quickly bank those successes and focus on thornier problems** — like immigration.