# NEG Wiki Doc---R6 vs Southern California HN

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### 1 – T

#### “Prohibition” requires a declaration of per se illegality

Loevinger 61 (Honorable Lee Loevinger- Assistant Attorney General in charge of the Antitrust Division. “THE RULE OF REASON IN ANTITRUST LAW” , *Section of Antitrust Law* , 1961, Vol. 19, PROCEEDINGS AT THE ANNUAL MEETING, ST. LOUIS, MISSOURI, AUGUST 7 THROUGH 11, 1961 (1961), pp. 245-251, JSTOR accessed online via KU libraries, date accessed 9/13/21)

Running through the history of antitrust law are two contrapuntal themes: A prohibition of restraint of trade and a principle lately called the "rule of reason" which limits the prohibition. The legal rule against restraint of trade began in the 15th century in cases holding that a contract by which a man agreed not to practice his trade or profession was illegal.1 However, in the course of development of the common law, it became established that agreements which were ancillary to the sale or transfer of a trade or business and which were limited so as to impose a restriction no greater than reasonably necessary to protect the purchaser's interest.2

Thus, when the Sherman Act incorporated the common-law principles on this subject into federal statutory law 3 by adopting the concept of restraint of trade, it presumably imported both the principle that restrictions on competition are illegal and also the principle that in some circumstances a showing of reasonableness will legalize restrictions on competition. Nevertheless, when the question was first presented to the United States Supreme Court under the Sherman Act, it was clearly held (despite later disavowals4 ) that the justification of reasonableness was not available as a defense to a combination which had the effect of restraining trade.' Indeed, it was intimated that the question of reasonableness was not open to the courts in these actions at common law.6 However, when the Court reviewed this matter in Standard Oil Co. v. United States,7 it said in fairly explicit terms both that the Sherman Act prohibited only contracts or acts which unreasonably restrained competition and that the standard of reasonableness had been applied to all restraints of trade at the common law. The Court's assertion is somewhat weakened by the fact that it construed the rule of reason not as applying a standard for judging the character or consequences of the challenged conduct, but as a technique involving the application of human intelligence, or reason, to the problem of making a judgment about whether the conduct does restrain trade.'

#### Violation — rule of reason is not topical

McKibben 85 (Michael D. McKibben-Vanderbilt University Law School, J.D., 1985, Vanderbilt Law Review, Associate Editor; Patrick Wilson Scholar. The Resale Price Maintenance Compromise: A Presumption of Illegality, 38 Vanderbilt Law Review 163 (1985), Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol38/iss1/3> , date accessed 9/13/21)

A rebuttable presumption, followed by rule of reason analysis 14 [[BEGIN FOOTNOTE 14]] 14. Under the rule of reason "the factfinder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition." Sylvania, 433 U.S. at 49. [[END FOOTNOTE 14]] in cases in which the defendant satisfies the threshold inquiry,15 would restore certainty and intellectual honesty to RPM cases. The rebuttable presumption would eliminate the need to reconcile contrary cases and the need to consider issues that parties now must address under the rule of reason. While the rebuttable presumption does not require that courts maintain or reject the Colgate doctrine,16 this Note argues that the Court could retain Colgate but primarily rely upon the guidelines and safeguards of the rebuttable presumption. This new line of inquiry would retain the benefits of the per se rule-efficiency and certainty-and would remain flexible enough to accommodate special cases in which RPM may be beneficial to the market. In many cases, the rebuttable presumption also would save society, courts, and litigants the protracted costs of rule of reason analysis.

Part II of this Note considers major RPM cases since the early 1900s, with special focus on Russell Stover and Filco v. Amana Refrigeration, Inc.,'17 cases which protect the defendant under the Colgate doctrine. Part III analyzes the weaknesses of the per se rule and the benefits that could inure to manufacturers and the marketplace under the rebuttable presumption. Part IV examines the strengths and weaknesses of the rule of reason and offers an improved rule of reason approach as the second part of the rebuttable presumption standard. Finally, Part V outlines a suggested analysis for RPM disputes using a rebuttable presumption of illegality. Part V also considers the effects of the presumption on federal antitrust laws.

II. THE CURRENT CONTROVERSY

A. Minimum Price Restrictions in the Supreme Court

Vertical price restrictions are written or oral directives setting a price above or below which a manufacturer wishes its distributors to sell. If the manufacturer establishes a price below which a distributor should not resell a product, the manufacturer is imposing minimum price RPM. Maximum price RPM-the setting of price ceilings- and minimum RPM are per se violations of section 1 of the Sherman Act."' Nonprice vertical restrictions, however, which include primarily territorial distributorship limitations, generally are reviewed under the rule of reason. 19

1. Dr. Miles: The Per Se Rule

Dr. Miles Medical Co. v. John D. Park & Sons Co.20 is the basis of much of the current academic criticism of the Supreme Court's RPM approach.2 ' The plaintiff Dr. Miles, a medicine manufacturer, required its wholesalers and retailers to adhere to a minimum resale price schedule. The plaintiff also required its wholesalers to maintain control over the retailers' subsequent resale prices. The defendant Park & Sons, a wholesaler that refused to purchase from Dr. Miles under the minimum price contract, bought Dr. Miles' medicines from third parties and resold them below the plaintiff's price schedule. The plaintiff charged the defendant with inducing the plaintiff's distributors to breach their contracts by reselling to a price cutter.22 The Court denied the plaintiff's request for relief and held that the plaintiff's contract provision was void under common law and the Sherman Act. 3

After determining that the agreement between Dr. Miles and its vendees fulfilled the duality requirement of the Sherman Act,24 the Court found that the plaintiff's resale price schedule eliminated competition by controlling the price at which all purchasers received the product.25 The Court refused to accept the defendant's argument that producers of patented products have a right ordinary sellers do not have-the right to dictate the destiny of their products.26 The Court inquired whether the plaintiff had a right to restrain trade. The Court held that generally a right to control alienation does not exist without an agreement.2 7 Applying the common-law rule that contractual restraints on alienation must be reasonable and limited to the necessity of the circumstances, 2 the Court found that Dr. Miles' agreement did not fit any of the common forms of acceptable restraints.29

The Court's final inquiry was whether the benefits that the plaintiff gained from its pricing restrictions were entitled to more protection than the property rights that the defendants had in the medicine.30 The Court's response to this issue forms the heart of the per se rule.31 [[BEGIN FOOTNOTE 31]] 31. Per se rules prohibit certain conduct without inquiry into possible justifications for the conduct. Courts impose per se rules when the interests of judicial economy outweigh other interests. See Note, Fixing the Price Fixing Confusion: A Rule of Reason Approach, 92 YALE L.J. 706, 708 (1983). [[END FOOTNOTE 31]] Although the Court never explicitly condemned all vertical price fixing agreements, it found that the effects of the Dr. Miles scheme were the same as the effects that could result from horizontal price fixing at the dealer level. The Court, therefore, held that both kinds of price fixing were illegal.3 2 The Supreme Court's focus on the effects of the alleged violative activity, without regard to its purposes or benefits, is characteristic of other Supreme Court per se decisions. 3

#### VOTE NEG

#### FIRST---Ground---balancing tests devastate core links, because they allow the practice when it’s beneficial. AND, creates a moving target, because the disallowed behavior is context-dependent.

#### SECOND---Bidirectionality---rule of reason creates legally protected practices

### 2 – Politics

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

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

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

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

#### 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.

### 3 – Con Con

**Text: Pursuant to Article V of the Constitution, at least two-thirds of the States should call a limited constitutional convention and at least three-fourths of the States should ratify a constitutional amendment that increases prohibitions on anticompetitive business practices by including attention costs as a component of price for the purposes of antitrust enforcement.**

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

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

Decision costs and benefits

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

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

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

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

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

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

### 4 – FTC CP

#### Text

1. The FTC should announce it is rescinding its creation of a new rulemaking group within the FTC’s Office of the General Counsel. The FTC should follow through with the announcement by no longer proceeding with rulemaking options and default to agency guidance as an alterative; (outlined in the 1AC Brown and Pozza ’21)
2. The FTC will issue enforcement guidance that the presently existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes attention costs as a component of price for the purposes of antitrust enforcement. The FTC should release an interpretive guidance doc and data sets that reflect this and enforce accordingly;
3. Federal and Appellate Courts will not grant cert to cases challenging the legitimacy of the FTC’s authority to make this determination.

#### The cplan solves. It also competes – the FTC interprets current authority, instead of 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.

#### Guidance is distinct from Rulemaking. We are the former and it won’t get rolled-back.

* Explains “notice-and-comment” distinction;
* It does not expressly “bind” in a legalese manner that risks Court reversal – but it functionally binds;

Seidenfeld ‘11

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

A. Legal Effect and the Distinction Between Legislative Rules and Guidance Documents

The first school to emerge, led by Robert Anthony, was motivated by a concern for agency abuse of guidance documents.75 When agencies adopt rules with the force of law, they are supposed to use notice-and-comment rulemaking. Often, however, agencies will adopt policy statements or interpretive rules that in practice bind regulated entities without following notice-and-comment procedures.76 Professor Anthony devoted a good part of his scholarship to advocating that courts should police such abuse by determining which purported guidance documents actually do create new, practically binding law and reversing them on grounds that they are really "spurious rules"—legislative rules issued improperly without notice-and-comment procedures.77

Anthony advocated different tests to determine whether purported policy statements, as opposed to interpretive rules, were spurious rules.78 On the one hand, a policy statement is an indication of how an agency intends to exercise discretion that it is given to implement the statutes and regulations it administers. Policies do not follow from the language of these statutes and regulations, but to qualify as a policy statement, the document must not definitively identify the manner in which the agency will apply these sources of law.79 An interpretive rule, on the other hand, is meant to explain preexisting legal obligations and relations that are embodied in the agency’s authorizing statutes and regulations.80 Hence, a document is a valid interpretive rule and needs not go through notice and comment if it follows from the language it is interpreting.

1. Statements of Policy.—For a policy statement, the “ex ante legal effect” school looks at whether the document was issued with intent to bind or otherwise had binding effect.81 Indicia of such bindingness include, most importantly, definitive language indicating the course of action the agency would take when applying relevant statutes and regulations to particular situations.82 Other factors that might indicate sufficient bindingness are whether the agency indicated a clear intent to follow the document when addressing particular cases, whether the agency published the document in the Code of Federal Regulations, and whether the agency expressly indicated that the document was meant to be a nonlegislative rule.83

A major problem for this ex ante approach is that binding legal force comes in many flavors and intensities, and it is not self-evident from the face of a policy statement how the agency will apply it in subsequent particular situations. As already noted, virtually everyone accepts that only legislative rules can have independent legal force.84 This means that a person who is alleged to have violated an agency’s regulatory law must be shown to have violated the underlying statute or legislative rule that an agency is implementing; it is not sufficient for the agency to demonstrate that the person violated a policy statement.85 But Anthony advocates that documents that are practically binding should be deemed to be legislative rules as well.86 This raises the question of what makes a rule practically binding.

Courts have ruled that a policy statement specifying precisely what a regulated entity can do to comply with agency legislative rules is binding.87 Such a statement poses a dilemma for an entity about whether to comply with the announced policy or risk prosecution and potential penalties. To the extent it induces changes in the entity’s conduct, the statement may appear sufficiently forceful to be a legislative rule that cannot be promulgated without notice and comment.

#### Framing point – the First plank of the CP alone solves ALL OF THE FTC ADV.

#### Every 1AC card assumes FTC RULEMAKING – ONLY Rulemaking risks SCOTUS review. This is NOT because of the substance of the Aff – it’s because of the Legal issues that

## Adv 1

### Link Turn

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

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

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

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

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

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

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

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

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

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

**Link only goes one way --- best evidence proves antitrust regs only RISK stifling innovation**

**Bradford** et al **15** --- Anu Bradford, Henry L. Moses Professor of Law and International Organizations at Columbia Law School, Sharyn O’Halloran Nathaniel Sokol, Does antitrust policy promote market innovation and competitiveness. Columbia University, December 9, 2015, <http://acle.uva.nl/binaries/content/assets/subsites/amsterdam-center-for-law--economics/conferences/celse-2016/conference-papers/session-iv/paper-bradfordetal---2016.pdf?1466032585608>

Antitrust laws, which constrain monopolies and prohibit cartels and other forms of anticompetitive behavior in markets, have, over the past three decades, spread from some 30 countries to approximately 120 countries across the globe, as illustrated in Figure 1. The World Bank, the International Monetary Fund (IMF), the European Union (EU), the United Nations Conference on Trade and Development (UNCTAD) and the Organisation for Economic Co-operation and Development (OECD) have all encouraged governments to enact such laws and to devote substantial resources to their enforcement. The adoption of a domestic antitrust law has frequently been a requirement for a loan or other financial assistance by the World Bank or the IMF as well as the sine qua non for securing a preferential trade agreement with the EU. Notwithstanding the conviction with which these policies have been promoted, we have **limited empirical evidence** evaluating whether these policies actually work. Do they foster market competition with the ensuing benefits of greater efficiency, economic prosperity, innovation, and enhanced political and economic freedom? In other words, is the adoption of such laws good public policy and an efficient use of scarce public resources in both developed and emerging markets? Our research seeks to provide a theoretical and empirical foundation for this key policy question.

Efficiency is conventionally thought of as the primary goal of antitrust law—whether defined as the maximization of consumer welfare or total welfare. However, many countries have adopted antitrust laws with a much broader set of goals in mind. In South Africa, for example, an antitrust law passed in 1998 emphasizing the objectives of undoing the “excessive concentrations of ownership and control” created along racial lines by the “apartheid and other discriminatory laws and practices” and “balancing the interests of workers, owners, and consumers” for the “benefit [of] all South Africans.”1 In 1998, Fiji enacted a Commerce Act that aimed to “balance ... efficiency and environmental and social considerations” and “ensure non-discnminatory access to monopoly ... infrastructure or services.”2 Antitrust statutes rarely identify innovation as an explicit goal of antitrust law. Our research suggests that only Kenya (2010), New Zealand (2008), The Netherlands (1993) and Tanzania (2000) have adopted an antitrust law containing such a reference. However, “efficiency” as a stated goal may be thought to accommodate dynamic efficiency as well. References to innovation are also likely to be more commonly found in various guidelines and other non-binding instruments that antitrust agencies promulgate to clarify their enforcement policies and priorities. For instance, the 2010 US Horizontal Merger Guidelines stipulate:

“Competition often spurs firms to innovate. The Agencies may consider whether a merger is likely to diminish innovation competition by encouraging the merged firm to curtail its innovative efforts below the level that would prevail in the absence of the merger. That curtailment of innovation could take the form of reduced incentive to continue with an existing product-development effort or reduced incentive to initiate development of new products.”

The old 1992 Merger Guidelines did not address the innovation effects. A similar trend towards growing acceptance of innovation as a goal of antitrust law emerges from our cursory examination of US courts’ antitrust rulings. US courts increasingly invoke “innovation” and “dynamic efficiency” as justification in their antitrust decisions and rulings, suggesting that the promotion of innovation and dynamic efficiency is today seen as a key goal (or outcome) of a robust antitrust regime. In the 1960s, only 5% of the antitrust judgments by US courts made a reference to “innovation” or “dynamic efficiency.” This figure increased to 15% by 2000 and to 35% today. This speaks for a growing recognition of innovation as an important consideration informing antitrust policy.

As an empirical matter, evidence on the impact of antitrust regimes on market outcomes is **mixed**. One of the key challenges has been the absence of rigorous measures of antitrust laws and their enforcement. Most existing studies have sought to measure the causatum of these laws by merely identifying whether a given country has an antitrust law in place. **Yet this method ignores significant variation in the scope and content of antitrust laws as well as the divergence on how they are enforced.** Moreover, the design and ultimate efficacy of these laws reflect underlying economic and political conditions as well as varying institutional environments.

We propose to address this gap in the literature by developing a novel dataset on antitrust laws and enforcement across time and jurisdiction and analyzing these data in their nuanced political and institutional context. This allows us to capture the variation of antitrust regimes and, **for the first time, seriously test alternative hypotheses on the impact of antitrust policy on economic performance and innovation.** Specifically, we can test whether these laws have a statistically significant effect on key dependent variables, such as competitiveness, the intensity of competition on markets, industry markups, the level of foreign direct investment or innovation and on measures of overall economic performance, such as growth in total factor productivity or real per capita gross domestic product (GDP). This paper is the first in a series of papers measuring the effect of antitrust policy on market outcomes, focusing specifically on the relationship between antitrust laws and innovation. To measure innovation, we use data on patent applications filed with the USPTO, accounting for their importance by weighing each patent by its combined citation count.

Ultimately, this research will help us understand not only whether these laws are beneficial but also provide insights as to which elements of these laws or enforcement actions have the greatest impact on economic growth, competitiveness and innovation. Most importantly, we can test how optimal policy design varies depending on the country’s level of development, the maturity of its antitrust regime and existing governance infrastructure, as well as other key institutional (economic and political) variables. Our motivating hypothesis is that because of the endogenous nature of these institutional arrangements, different combinations of policy features will work better under different conditions.

The paper is organized as follows. The next section briefly reviews the scant literature on the effects of antitrust laws on various market performance indicators, including innovation. In Section III, we build off the new political economy literature of regulatory design and describe our key hypotheses as well as the empirical strategy to test them. We then outline the data collected, and provide initial trends on the relationship between these laws and innovation.

II. Antitrust, Market Competitiveness and Innovation

The existing research on the effects on antitrust policies is **scarce and inconclusive**. While there is near-consensus that competition enhances welfare, there is no such consensus on whether competition policy is beneficial. Some economists argue that antitrust intervention in the operation of free markets makes societies worse off. This is due to the difficulty governments have distinguishing healthy competition from anticompetitive behavior and because of the underappreciated power of markets to keep anticompetitive practices in check (Crandall and Winston 2003). Other economists contest this view, emphasizing the deterrent effect of antitrust laws and the positive net impact that antitrust policy has on social welfare as a result (Baker 2003; Werden 2003).

Similarly, some authors of empirical research find that antitrust laws have significant impact on economic performance indicators while other studies contest these findings. There is also disagreement on whether antitrust policies have a greater impact on developed as opposed to developing countries and whether laws on the books or investment in enforcement infrastructure yield better outcomes. We discuss the key findings in the literature below.

2.1 Antitrust and Market Performance

There have been several attempts to measure how antitrust policy impacts economic performance. Gutmann and Voigt (2014) find that the introduction of competition laws is correlated with an increase in annual growth rate. Yet they find no correlation between competition laws and total factor productivity. Petersen (2013) finds that antitrust law’ has a significant effect on economic development (measured by GDP per capita and average rate of economic growlh), but only after an antitrust regime has been in place for 10 years. Dutz and Hayri (1999) find correlation between effective antitrust policy and growth in South America and many European countries, but discovered that this correlation breaks down amongst the Asian Tigers.

One disagreement among scholars relates to how antitrust policy impacts countries at different income levels. When comparing the effect of competition policy on low- and high-income countries, Gutmann and Voigt (2014) find that introducing antitrust law' boosts investment and decreases corruption, but only in low-income countries. In contrast. Ma (2011) finds that emerging markets benefit less from a strong antitrust policy than highly developed countries. Ma tests whether antitrust laws and general “government effectiveness” enhance the average annual growth rate of productivity (real GDP per worker). He finds no statistically significant relationship between this competition/enforcement variable and economic growlh for poor countries, but shows that a positive and significant correlation exists in rich countries.

Several scholars have compared the relative effects of antitrust law s and enforcement institutions on market outcomes. Hylton and Deng (2007) find that the “scope” of a country’s antitrust law' is positively correlated w ith the intensity of competition. At the same time, the authors find no statistically significant correlation between the antitrust agencies’ enforcement budget relative to GDP or the existence of a competition agency and increased competition intensity. This is contrary to Ma’s (2011) finding discussed above. Clougherty (2011) also finds a positive and significant correlation between budgetary resources devoted to antitrust policy and annual growth of per-capita GDP. Some other studies also suggest that enforcement and institutions matter, i.e. that antitrust policy is less effective in countries w ith less efficient legal institutions (Buccirossi, Ciari, Duso, Spagnolo and Vitale (2011). Other studies are more mixed in this regard: Voigt (2006) finds that the de facto independence of an antitrust agency is positively correlated with an improvement in total factor productivity. However, his finding is no longer robust when he includes measures of the general quality of institutions and the effectiveness of the government.

2.2. Antitrust and Innovation

Turning specifically to the relationship between antitrust policy and innovation, the existing theoretical and empirical literature is similarly inconclusive. Existing theoretical literature on the relationship between competition law and innovation is wide-ranging but indeterminate. Empirical research on the relationship between antitrust policy and innovation is almost **nonexistent**. It is little contested that antitrust laws, when properly drafted and enforced, can enhance efficiency and increase consumer welfare. Vigorous antitrust policy can keep prices and output high, thereby promoting static efficiency. It is more debated whether antitrust laws are able to foster dynamic efficiency and, hence, spur companies to develop and bring new innovations in the market.

The **key policy question** focuses on the **amount of market power antitrust laws should allow** in order to create or preserve incentives for innovation. The debate often starts by contrasting the arguments made by Schumpeter (1942) and Arrow (1962). Schumpeter famously argued that the prospect of market power and ensuing monopoly rents **spur innovation**. Arrow challenged this view, arguing instead that monopolists have an interest in preserving the status quo and less to gain from innovating. According to him, competition incentivizes firms to innovate. In the same vein, Tirole (1997) suggested that the monopolist is likely to hold back innovation because of the “replacement effect”—the idea that innovation would only replace a monopolist’s existing rents. Several commentators today have declared the debate over, concluding that Arrow has won and maintaining it well established that competition promotes innovation (Priest 2011 and Baker 2007). Others claim that the two views are, in fact, compatible (Shapiro 2012). If there is a prevailing view today, it seems to be that neither oligopolistic market structure nor highly competitive markets provides the most fertile environment for innovation, but that, on balance, competitive market structures are more fostering of innovation than the existence of monopolies or cartels (Motta 2004). This would suggest that optimal antitrust law would also strike the middle ground, allowing for vigorous enforcement but recognizing that all monopolies and all concentration is not evil. Yet this observation rests on an uncertain foundation since a large number of scholars continue to view the debate ultimately largely unsettled (Gilbert 2006; Motta 2004; Davis 2003).

There are reasons to expect that antitrust laws and their enforcement positively affect incentives to innovate (Baker 2007; Shapiro 2012, Priest 2011). Antitrust laws prohibit collusion between rivals, exclusionary practices by dominant companies or mergers between competitors, among others. They encourage entry and rivalry, which creates incentives for firms to find ways to reduce costs, improve product quality or develop new products to increase their profits. Innovation is therefore a way to get ahead of rivals. There is also significant empirical evidence showing that companies that are shielded from international competition fall behind and lose their ability to compete because of the missing rivalry that would have driven them to innovate (Porter 2001). The influential paper by Aghion et al. (2005), discussed above, finds an inverted U-shape relationship between competition and innovation. This does not prevent one of the authors of that study, Peter Howitt (2004 and 2007), from concluding that “a strengthening of competition policy is likely to have a positive overall effect on innovation.”

The arguments to the contrary rest on the idea that innovation is costly (Schumpeter 1942). R&D is a fixed cost and often easier to fund if the resources are already within the firm. Large firms, therefore, usually have the **greater ability to innovate**, the argument goes. If they can also better protect their investments in R&D post-innovation due to their significant market power, the incentives to innovate should **increase**. Mergers can lead to greater innovation because the larger firm and market size **increase the firm’s ability and incentive to invest in R&D**. Mergers can also have a **positive effect on innovation** if the merging firms are able to achieve synergies by combining their R&D activities (Katz and Shelanski 2007). This line of reasoning argues for the loosening of antitrust policy as a way to maximize firms’ incentives (and resources) for innovation.

Most commentators seem to agree that the relationship between competition and innovation is complex. Aghion et al. (2005 and 2009) find that there is an inverted-U shape link between competition and innovation, with too little or too much competition reducing innovation. This inverted U-shape relationship holds if competition is measured by several indicators, such as mark-ups (2005) or foreign entry (2009). In their research, Aghion et al. measure innovation with patent data. However, Dutz et al. (2011) do not find any statistically significant effect on proxies of competition at the firm level, such as number of domestic and foreign competitors, level of R&D investment, product and process innovation and TFP.

Several other studies suggest that there is a non-linear relation between competition and innovation which can be influenced by several factors. According to Aghion et al. (2005 and 2014), the existence of a technological gap and the type of industry matter. The authors use the Lemer Index (price cost margin) as the main indicator of competition and the average number of patents taken out by firms in an industry as the primary indicator of innovation. They find that competition encourages neck-and-neck firms (i.e., firms operating at identical technological levels or at a technology frontier) to innovate but has the opposite effect on technological laggards. Schmutzler’s theoretical paper (2010) reaches similar results. He develops a model to show that a positive effect of competition on R&D investments is more likely for leaders than for laggards. Vivès (2008) shows that the impact of competitive pressure on innovation depends on the type of innovation considered (process or product innovation) and on the cause of the increase in competition (increase in the number of competitors, greater product substitutability, increase in market size, reduction in entry barriers).

Empirical research on the effect of competition policy on innovation is almost nonexistent.5 Marinova et al. (2005) is a rare study focusing on the effect of antitrust enforcement on innovation. The study finds that higher levels of civil antitrust enforcement actions of the U.S. Department of Justice lead to a significantly higher number of patent filing during the following year. By contrast, using DoJ Antitrust Division expenditures as a policy indicator and relying on a VAR-modcl of labor productivity, Young and Shughart (2010) find that antitrust enforcement has a negative effect on productivity growlh, which they associate with an adverse (temporary) reduction in innovation.

2.3 Measuring Competition vs. Competition Policy

As the above references suggest, most of the existing empirical work seeks to model and measure the relationship between competition and innovation. They rely on the **Lerner Index** or some variations thereof to measure whether markets are competitive, and proceed to test whether competition positively correlates with innovation. In these studies, low degree of product differentiation or low levels of market concentration often serve as proxies for market competition whereas R&D expenditures or patent filings are used to capture the rate of innovation. Our goal is related but ultimately different. **We do not directly seek to measure the relationship between competition and innovation**. Instead, our focus is on the relationship between **competition policy and innovation**. Our interest is therefore to test whether the **policy measures**—specifically **competition laws and their enforcement**—adopted and pursued by governments **actually spur innovation**. This is motivated by our broader desire to understand whether these laws are **effective**. These different independent variable measures are obviously related to the extent we believe that antitrust laws facilitate competitive markets. There are theoretical arguments supporting that case, but that is a separate empirical question that we will take on directly in another paper.

Measuring competition policy, as opposed to competition as such, has some advantages. Economists have recognized that the degree of product market concentration is a “highly imperfect” measure for competition (Gilbert 2006). Theoretically, it is difficult to defend an assumption that low levels of concentration would always be desirable. Firms differ in their efficiency and productivity levels (Bartelsman and Dorns 2000). Scale economies also suggest that it is sometimes efficient to have a market structure with fewer firms all possessing substantial market shares (Shapiro 2012; Demsetz 1973). Low degree of market concentration, therefore, tells us only so much about the competitiveness of any given market. Measuring the strength and direction of antitrust policy identifies regulatory environments that, if properly enforced, create and preserve competitive markets that accommodate varying degrees of product-differentiation or market concentration. It also allows us to pursue cross-national studies, with the benefits and drawbacks that such studies entail.

2.4. Shortcomings in the Existing Literature

**Until today, the few studies measuring the effect of antitrust policy on market outcomes have been of limited value**. The fundamental limitation of the existing scholarship stems from the **absence of reliable methods to measure the stringency of countries’ antitrust laws or enforcement.** Reliance on small samples (Kee and Hoekman 2006; Buccirossi, Ciari, Duso, Spagnolo and Vitale (2011) or aggregate indicators (Ma, 2011; Borrell and Tolosa, 2004) **compromise the accuracy of any conclusions drawn from the analysis**. Coding for the mere existence of antitrust laws (Gutmann and Voigt, 2014; Petersen, 2013) with binary variables has been the industry standard. **Any measurement of enforcement has relied on enforcement budgets alone** (Clougherty, 2011) **without linking specific antitrust provisions to relevant outcome variables or** accounting for variation in the types of **enforcement actions** (Hylton and Deng, 2007). These metrics provide **limited information** on what types of antitrust regimes are most effective and under what conditions. These approaches, therefore, offer **insufficient guidance** for the optimal design of antitrust laws.

A second weakness is that measures of antitrust laws fail to differentiate the impact of alternative policy instruments, decision-making criteria, and administrative procedures defining the scope of agency action, as well as available resources (budgets and staff), on the implementation and enforcement of these policies. The delegation of discretionary authority to administrative agencies, however, reflects the political and economic dynamics at play. Therefore, we highlight the endogenous nature of competition law and its ensuing impact on competitiveness and innovation.

A third limiting factor is that policy claims are not derived from an analytical framework yielding empirically testable hypotheses. This failure is important for two reasons: First, the causal mechanism by which antitrust laws impact market outcomes is undefined; and second, predictions gleaned from theory necessarily inform the research design adopted and the subsequent indicators constructed. Therefore, assertions evaluating the impact of antitrust laws on innovation **remain unvalidated**; neither the data collected nor the variables measured are sufficiently specified to determine the sign and magnitude of the underlying causal relationship. For example, it may be true that independent agencies implementing and enforcing complex antitrust laws work well in advanced democracies, characterized by well-functioning courts, competitive elections, free press, and effective legislative oversight. However, in newly forming democracies, which lack many of these traits, agency independence may have the opposite effect. Ultimately, we seek to advance the literature by responding to all these shortcomings. For now, we are able to take the first set of steps in that direction and share tentative results based on our initial analysis.

III. Theory and Research Design

The prevailing view is that antitrust regulation is one of the most powerful tools to shape the structure, operation, and distribution of the benefits of a market economy (Fligstein 1990; 2001; Gerber 2010). Antitrust laws seek to ensure sufficient competition in the market to the benefit of consumers by permitting government intervention against cartels and anti-competitive mergers, as well as the abuse of market power by dominant companies. Thus, the theory goes, antitrust laws enhance national welfare by contributing to more robust, competitive markets.

While this theory is widely endorsed, **the actual effect of these laws has not been subjected to rigorous empirical testing** thus far. Antitrust laws undoubtedly have the potential to significantly contribute to economic welfare and competitiveness. Nonetheless, we challenge the notion that antitrust laws are inherently effective. Instead, we argue that the efficacy of antitrust regimes depends on endogenous factors. Consequently, we need to disentangle these effects to define what constitutes “optimal antitrust policy” within the political and economic context that the policy is designed to operate.

We acknowledge the complexity of the theoretical debate on the relationship between competition and innovation. Yet in our examination of antitrust policy, we make several assumptions, building in particular on the arguments advanced by Shapiro on the importance of rivalry and contestability of markets when measuring the ability of antitrust policy to foster innovation. Rivalry describes competitive process as opposed to outcome. Contestability refers to the degree to which a firm can gain profitable sales from its rivals and the ease of market entry and exit. We assume that antitrust laws that foster rivalry' and ensure contestability' of markets generally create conditions that maximize innovation. Such laws are geared to foster competition by protecting the ability of each market player, w hether existing or entering, to win future sales from its rivals by virtue of superior efficiency and innovation. To ensure this, laws in place need to be sufficiently comprehensive and stringent, as well as guided by sound economic principles. We have developed an Antitrust Stringency Index to measure the stringency of antitrust laws across countries, and an Antitrust Specificity Index to measure the level of detail (delegation) of these same laws.

We further measure the economic soundness of antitrust laws through a separate index, distinguishing across provisions that reflect efficiency (as opposed to non-economic) considerations. We also take the viewr that the laws need to be enforced with sufficient resources and expertise, as laws in books alone do little to preserve rivalry and ensure contestability. We expect to have a w ide variety of enforcement metrics available for analysis soon, allowing us to measure actual enforcement practice. We further expect that laws that reflect prevailing political climate rather than economic considerations are less capable of generating conditions for rivalry and contestability. To proxy this, we measure the extent to which laws contain exemptions for certain industries-another metric that will be included in the analysis at its next stage.

While we are only able to proceed with highly incomplete empirical analysis at this stage, we explain below a broader set of hypotheses that we have developed and will be later testing. Specifically, we expect stringent antitrust laws and high level of enforcement to lead to more robust competition and greater innovation only in the presence of well-functioning democratic institutions, which ensure a minimum level of commitment to the rule of law, transparency and institutional effectiveness (Stringency Principle and Enforcement Principle). We also expect that more specific laws which effectively constrain agency discretion lead to greater market performance, including higher levels of innovation. Constraining the agency’s leeway in its enforcement decisions reduces the risk of agency capture, with ensuing benefits of greater innovation (Specificity Principle). However, we recognize that all agencies are not equally prone to capture and therefore likely to use their discretion in a way that reduces competition and innovation. Antitrust laws that give agencies significant discretion to incorporate their expertise when setting policy and to flexibly respond to changing conditions may also lead to better regulated markets.

We also expect antitrust laws to be effective only when their adoption is driven by a genuine domestic political commitment to their implementation and enforcement. Countries that have adopted laws due to external pressures (including as a condition for a loan or a trade agreement) are less likely to devote the resources for their effective implementation. In other words, externally imposed laws on the books—however stringent and comprehensive—do little to advance competitiveness if those laws are not internalized by the relevant stakeholders (Commitment Principle). We expect this domestic commitment to manifest itself through establishment of independent and adequately resourced as well as experienced antitrust agencies (Commitment Principle and Capacity- Principle).

Antitrust laws are likely to be effective only after they have been **properly entrenched** in the legal and economic infrastructure of the country (Capacity Principle). In other words, the same law and enforcement resources will likely **not enhance competitiveness when measured only two years, as opposed to ten years, after the law’s enactment** and the establishment of the agency. We further expect law s with **clear and narrow goals (such as consumer welfare as opposed to a long list of mixed policy objectives**) and a minimum number of exceptions for various industries **to lead to more competitive markets and greater innovation** (Favored Industry Principle). Similarly, especially for new and developing antitrust jurisdictions, narrowly tailored laws and focused enforcement efforts are likely to yield better results than complex law's that are harder to enforce (Complexity’ Principle). Finally, we expect laws that are motivated by economic considerations to have a more positive effect on market outcomes, such as innovation, than laws that reflect multiple goals, including wider considerations of public interest (Economic Soundness Principle). Table 1 summarizes these arguments as a series of empirically testable hypotheses regarding the impact of antitrust policy on market competitiveness, across countries and over time. In this early draft, we will focus on developing and testing the Stringency and Specificity Principles across a small subset of countries that are ready for the analysis.

IV. Data and Methods

To test the above hypotheses on the link between antitrust policy and market competitiveness, **we compile a comprehensive database of antitrust laws** in 119 countries since their adoption (with most countries entering into the dataset in the last 30 years). This represents the entire universe of countries that adopted antitrust laws by 2010. Recognizing the inherent gap between laws in the books and laws in action, we complement our data with **extensive input and output measures of antitrust enforcement** for a large panel of both developed and developing countries since 199010 Our data gathering of law s and enforcement measures builds on the most ambitious and comprehensive dataset on world antitrust regimes, which Anu Bradford has developed to an advanced stage with the help of funding from the National Science Foundation (NSF).”

4.1 Cross-National Antitrust Database

Two iterative processes define the data extraction and coding method." The first step in the manual coding process is locating and downloading the document sources from available websites. In the next step, annotators collect metadata (e.g. country, year, past year) regarding a country’s antitrust laws for a given year. The annotators then populate the relevant data fields by answering a series of Yes/No questions in a Qualtrics13 survey related to substantive statutory provisions as well as legislative goals, legal traditions, and exemptions from current antitrust law's. The following step checks for intercoder reliability, employing a second annotator to repeat the above process independently. Any discrepancies are resolved by a third, senior annotator. Detailed coding rules for antitrust laws are provided in Appendix I.14

Our dataset includes 119 jurisdictions—every jurisdiction that had adopted a domestic antitrust law by 2010. The coding goes back to the first law' impacting antitrust policy adopted in each jurisdiction. Three of those jurisdictions consist of regional organizations, including the EU, which exercise supranational antitrust jurisdiction over several countries. We have coded not only general antitrust laws but also other business laws or regulations, including sector-specific regulations, constitutional laws, criminal laws, and any other laws that entail provisions that govern competitive activity on the market. We have further coded these laws across 109 variables, ranging from the goals stated in the law, the scope of the law' (including any enterprise or industry exemptions), the remedies the law provides as well as the substantive rules for mergers, anticompetitive agreements and unilateral conduct by dominant companies.

At this stage in the project, the research team has gathered some degree of data on 112 of the 119 countries. Fifty three of the countries have undergone the complete double coding process concluding with an independent discrepancy analysis. The team has completed single codings on a further 35 countries, and double codings without a discrepancy analysis on 24 countries. All results at this stage remain tentative, and the data may change materially for the 59 countries the team has only partially coded. 7 countries remain entirely uncoded. Based on this subset of 112 jurisdiction, the number of laws subject to coding for each jurisdiction varies between 1 and 45. Together, the database thus far consists of 693 of laws or regulations and hence the total of 75,537 number of variables.

While these data can ultimately be used in a number of ways, we focus in this first analysis on two different policy indicators that we can draw from the cross-national antitrust laws database: Antitrust Law Stringency’ Index and Antitrust Law Specificity Index. The Stringency Index is developed to capture the “antitrust risk” that a company faces when it seeks to enter and penetrate the market in each jurisdiction. On a country-year basis, it measures the substantive prohibitions that a country’s (set of) antitrust laws contain on anti-competitive agreements, abusive practices by dominant companies or mergers. The broader the scope of conduct or practices that are prohibited, the higher the stringency score. Any defenses that the law provides (such as efficiency defense or public interest defense) reduce the stringency score as such provisions lower the likelihood that a firm will be found to be violating antitrust laws. We recognize that anticompetitive conduct cannot be deterred with substantive prohibitions alone. Our stringency index therefore also measures the penalties available for the antitrust agencies, the extraterritorial reach of the law, the availability of private enforcement and the extent to which the law’s reach is compromised through various enterprise-type or industry exemptions. The Specificity Index measures the scope or comprehensiveness of the law. As it captures the level of detail the law entails, it also serves as a proxy of the extent of delegation the legislator has extended to the antitrust agency (measuring both the powers given but also the constraints imposed on agency discretion). The more specific the law, the less discretion the antitrust agencies enjoy. Both indices are explained in detail in Appendix 3 and 4.

4.2 Data Trends

As a preliminary test on the robustness of our measures, we restrict our analysis to eight countries, including the United States, United Kingdom, France, Germany, Japan, Australia, South Africa, and the European Union. The countries were selected to control for economic and political disparities, as well as to allow for variation in legal traditions. Limiting our focus to these countries still provides a robust sample with 237 observations. Figure 3 plots the stringency variable from 1975 to 2010. We see some countries like Australia and the United States started at high levels of stringent antitrust policies and remained there. Other countries like Japan and South Africa began the time span at the lower end of the stringency spectrum. Japan, for instance, doubled the stringency of its antitrust policies in the 25 year period measured, moving from a stringency score of roughly 3 to a score of over 6.

The bar chart in Figure 4 shows the aggregate trend for the measures for all countries over the study period. Both the stringency and specificity of antitrust laws have increased on average. However, the specificity of antitrust laws took a huge jump in the early 2000s, most likely reflecting convergence around EU antitrust policies.

Figure 5 shows scatter plots of the average stringency and specificity of antitrust laws for each country near the beginning and end of our measurement period, demonstrating a consistently positive relationship between both measures. The plot indicates varying subgroups over time, and also shows that countries that added to their antitrust regimes through the period (Japan and South Africa) experienced substantial increases in both specificity and stringency. Countries that entered the period with well­developed regimes, on the other hand, demonstrated smaller, non­uniform movements.

Our measure for innovation is patents granted by the USPTO from 1976 to 2010. Figure 6 (below) illustrates the distribution of patents over the time period for each of the sample countries. In line with the spread of antitrust policies, patents have increased significantly over the time period, leveling off around 2010. While all countries participated in the growth of patents, the US clearly dominated approved patent applications followed distantly by Japan. The log of patent counts in panel (b) of Figure 6 shows the same ordering of granted patent applications, demonstrating a rising trend and subsequent leveling off

4.3 Measuring Innovation

The empirical analysis is motivated by the theoretical hypotheses derived above. The key outcome variable to be explained is innovation. Here, we use the U.S. Patent and Trademark Office (USPTO) data as a proxy for market innovation. The patent data contains all patent applications granted by the USPTO from 1975 to 2014. The data are aggregated by the number of patent applications for each year and country. During the time period, over 188 countries submitted applications to the USPTO, containing some 6,340,707 individual patent applications.

Patents have long been recognized as a rich source of information for studying innovation. Hall, Jaffe and Trajtenberg (2005) note the numerous advantages of patents as a proxy for innovation, including detailed information on inventors, terms of technology, and country of origin. Moreover, the U.S.P.T.O grants over 150,000 patents a year, making over time and cross country studies possible. Equally important, however, is the quality of those patents.15 The value of patent counts as a proxy for innovation is limited by considerable variance in the quality and impact of individual patents across industries and within sectors.

To account for these differences in the quality of patents and adjust for the nosiness of patents as a measure of innovation, we weigh each patent by the number of times it was cited by all other patents, excluding self-citations.16 The log of the weighted patent count shown in Figure 7 displays a similar picture as above: the US receives the most high quality patents, South Africa receives the least.

In addition, we add a number of political and economic controls, including GDP per capita, imports, exports, Polity 4 (which measures the strength of political institutions) and geographic latitude. Table 2 provides descriptive statistics.

V. Empirical Analysis

Our focus is to understand how the stringency and specificity of competition laws adopted and enforced by governments impact innovation. The stringency hypothesis states that given well-functioning democratic institutions, more stringent antitrust laws lead to more innovative markets. Without such institutions, we expect the impact of policy stringency on innovation to be indeterminate or even negative. The specificity hypothesis emphasizes the amount of discretionary authority that regulators are given to set and enforce antitrust law. The more specific the law, the more constrained the agent enforcing it. This reduces the risk of capture, with a positive effect on dynamic efficiency. Thus, specificity should also be positively related to market innovation.

To make robust causal inferences regarding the impact of specific policy features of antitrust laws on market innovation, we link the antitrust measures to market innovation as measured by patents. Specifically, we estimate:

Y it- a + P^tf-i + 09//-1 + 8 Eq. 1

where Y u is the log difference of the weighted patent count by country over time, 4\* is one of the antitrust policy indices, and (p /t\_] is a series of economic controls that may also impact market innovation.17

As a first view into the data, we conduct robust least squares estimates, controlling for heteroskedasticity and time trends. Given that we are analyzing only eight OECD countries, including the European Union, we do not include country specific fixed effects here.

Table 2 shows the robust ordinary least squares results. Column 1 and 2 estimate the percent change of patent counts weighted by citations for each of the eight countries over the time period. The key independent variables of interest include stringency and specificity of antitrust laws by country over time. We also control for a number of economic variables like per capita GDP, imports, and exports, which can also impact market innovation. We include a one year lag structure to control for delays in the impact of antitrust policy on patent applications.

The results show a negative coefficient for stringency of antitrust laws, implying that more stringent laws lead to less innovation. The specificity of the laws is also negative and statistically significant. This suggests that the more specific or less discretionary are antitrust policies, the less innovation as measured by patents is observed.

These initial results may reflect inherent endogeneity in cross-country studies, a two-way causality relationship between the predictive variable (antitrust policy) and the dependent variable (patents), or omitted variable bias. The identification of this potential endogeneity between our key variables is most likely related to the omitted variable bias. For example, the strength of political institutions, the independency of the judiciary, lobbying by organized interests, and so on, could play a key role in the effectiveness of antitrust law'.

To account for this potential identification issue, we follow Buccirossi et al (2013) and perform an Instrumental Variable estimation or two stage least squares. In the first stage equation, we estimate our instrument, antitrust policy measures (specificity and stringency) against a series of exogenous instruments. As we are estimating the impact of the policy features of antitrust law-on innovation, it makes sense that we control for the effectiveness of political institutions. We use the Polity 4 index, which consists of six component measures that record key qualities of executive recruitment, constraints on executive authority and political competition. It also records changes in the institutionalized qualities of governing authority. To capture country specific effects, we also include total population and a country’s latitude as instruments.

The second stage of the analysis uses the stringency and specificity instruments and estimate their effect on the percent change in patents, again controlling for possible economic effects. The results of the IV estimation shown in columns 3 and 4 of Table 2 reveal similar results. Stringency continues to have a negative impact on patents but is no longer significant. Specificity, on the other hand, remains stable: the index is negative and significant, even after controlling for economic conditions.

The findings illustrate the complexities of estimating the impact that competition policy has on market innovation. The stringency of antitrust laws is either negative or insignificant after controlling for various possible economic effects. This suggests that the strength of antitrust policy is not a key determinant of the percent change in the weighted patent count over time across these eight countries.

We emphasize that these findings are preliminary and tentative and rest on a partial analysis of still incomplete data. The results may change once we expand the analysis to the entire set of countries. We will also confirm the robustness of our composite indicators for stringency and specificity by repeating the analysis based on each sub-component of the respective index separately, adopting principal components analysis. Even with these adjustments, we recognize that our focus on antitrust laws alone capture only one aspect of antitrust policy.18 It is well accepted among legal scholars that the stringency of a law on the books is insufficient to ensure their enforcement. Hence, a more robust policy measure will also account for the enforcement resources and practices. Political institutions also matter. Well resourced and trained regulators with independent judiciaries are likely to be key determinants in measuring market outcomes. In later versions of this paper, we will take into account these possible effects as well. We will also examine whether the economic soundness of antitrust law, as opposed to its stringency, per se, leads to greater innovation. This alternative policy indicator will capture the quality of an antitrust regime as opposed to its quantitative stringency alone.

With all these caveats in mind, we have few preliminary thoughts on what may explain the initial findings with respect to this subset of countries. The negative relationship between innovation and the stringency of antitrust laws might reflect Aghion et al’s (2005) argument that the relationship between innovation and competitiveness is not linear but rather an inverted U shape. In this scenario, when overall competition is low, we are likely to see more neck-and-neck competition and, hence, more innovation. But when competition is high, only laggard firms are likely to innovate. This suppresses the amount of overall innovation that takes place. The result is that the number of patents will decline and only large firms with ample resources will enter the patent market. If stringent antitrust policy is geared toward maximizing rivalry and leads to more competition, we might, therefore, expect exactly the unstable impact on innovation that our sample implies through the ambiguous effect stringency has on innovation. This would suggest that stringency score will fail to generate a positive relationship under most models. At the same time, our economic soundness index, which reflects a balance between tolerating and restraining market power, may be better able to identify the kind of variance in laws that positively correlates with innovation.

The negative and significant relationship between the specificity index and innovation challenges the well-entrenched political economy story according to which more agency discretion leads to increased capture, which presumably compromises the law’s ability to foster innovation. The political economy story may well capture the situation in some subset of the countries we will analyze when the sample is extended to the full set of antitrust jurisdictions. But, for established, experienced and competent agencies (including those in our sample), we may see agency discretion has the opposite effect, especially if these agencies are independent from political control.19 Greater discretion may allow for more sound decision making as the expertise of the agency can guide the decisions. Less specific laws allow enforcement to incorporate the “rule of reason” principle, and flexibly respond to changing market conditions, while taking into account legitimate differences across industries and markets so that both static and dynamic efficiency is maximized.20

VI. Conclusion: Policy implications

Antitrust laws represent some of the most contested policy tools that governments employ to shape the structure of the markets and influence the competitive environments in which domestic and foreign firms operate. Antitrust policy reflects a fundamental choice that determines the relative power balance between government and the market. It is therefore surprising that the large scale global proliferation of these contested laws rests on a very thin empirical foundation of their efficacy. At the same time, promotion of innovation is one of the most fundamental goals governments chase in their pursuit of economic growth and prosperity. Antitrust laws are often presumed to advance this goal, yet the causal mechanisms that would establish a link between antitrust policy and innovation is often under-theorized and empirically unverified. Our aim is to fill this gap in the literature with crisp theoretical and empirical insights.

With this in mind, we have created a novel dataset capturing unprecedented detail on the scope, goals, and history of antitrust laws in 119 jurisdictions, matched by data on the enforcement resources and practices backing those laws. For this paper we employed a preliminary review of only eight OECD countries to examine our hypotheses regarding the impact of the stringency and specificity of their statutory antitrust regimes on innovation in their economies. Citation-weighted USPTO patent filing data provided a proxy for innovation. We anticipate that our early findings may change materially as we expand the analysis to include the remaining jurisdictions and account for other characteristics of the antitrust regimes, such as economic soundness, clarity of goals, actual enforcement practice, and scope of supplemental regulation through court-created common law.

Our initial analysis implies a **significant negative relationship between antitrust law specificity and innovation**, and an ambiguous to slightly negative relationship between antitrust law stringency and innovation. These results ran contrary to our hypotheses, based on widespread, though heavily debated, theoretical analysis, that stringent and specific antitrust law’ would minimize agency capture, foster productive regulation of markets, increase competition and promote innovation. If these results hold in our subsequent analysis, they may support two **significant conclusion**s**.** First, application of stringent and comprehensive antitrust laws as currently drafted in various jurisdictions throughout the world **may not have the ability to foster innovation**. While such laws may provide other benefits, including potential facilitation of static efficiency, their expansion **cannot be justified** with the goal of contributing to innovation in the markets. Second, the inability of existing antitrust statutes to foster innovation does not imply that antitrust regimes could not be drafted to promote dynamic efficiency. But this will likely call for reevaluation of the theory underlying the laws currently in place and, ultimately, legislative reform. That said, any such conclusion would be premature given the preliminary nature of our findings to-date.

### Alt causes to start ups

#### Alt causes to startups MSU=yellow

1AC Smith 18 (Noah Smith, Noah Smith is a Bloomberg Opinion columnist. He was an assistant professor of finance at Stony Brook University, and he blogs at Noahpinion, “America’s Startup Scene Is Looking Anemic,” June 7, 2018, *Bloomberg*, https://www.bloomberg.com/view/articles/2018-06-07/america-s-startup-scene-is-looking-anemic)

More worrying, however, is the decline in high-tech business formation. Tech businesses, unlike corner stores, tend to be high-growth businesses that employ lots of people. That same demand for labor also probably helps to drive up wages. And perhaps most important for the long term, technology startups are important for productivity growth.

Innovation is at the core of what tech startups do. They don’t necessarily do original science, but they take scientific findings and new technologies and combine them with creative new business models. That results in either better or cheaper versions of existing goods — for example, improved lithium-ion batteries — or entirely new goods that people didn’t even realize they would want, like coding tool GitHub (which was recently acquired by Microsoft Corp. for $7.5 billion). Newer, better and cheaper products raise the overall standard of living in the economy.

So it’s disturbing to see that high-technology startups have also been getting rarer. Here is a graph from a recent paper by economists Ryan Decker, John Haltiwanger, Ron Jarmin and Javier Miranda, who study economic dynamism and business formation, showing the percent of young businesses in various sectors:

Chart, histogram

Description automatically generated

The data only goes through 2013, so it’s possible that the last few years have seen a reversal of the trend. The Great Recession — from which the recovery only really began in earnest in 2013 — probably pushed these lines downward. But there are reasons to think there hasn’t been much of a startup recovery. Chris Canipe of the website Axios notes that startup formation has barely ticked up in the last few years. While it’s possible that high-tech companies are bucking the overall trend, it seems unlikely.

So why are so few high-technology companies being formed in the U.S.? There are a number of possible explanations. The boom in high-tech activity in the 1990s might have been a one-time bubble, or a temporary burst of activity in response to the invention and expansion of the internet. Decker et al. also mention the possibility that the U.S.’s aging population might result in fewer founders and high-tech workers. An extremely pessimistic possibility is that there might simply be fewer new technologies and ideas to exploit.

But it’s also possible that the high-tech sector is becoming dominated by a few big players, leaving less room for innovators to break in. Tech titans like Amazon, Facebook Inc., Apple Inc., Alphabet (Google) and Microsoft have grown to staggering size:

Chart, histogram

Description automatically generated

These companies may be such powerhouses that entrepreneurs don’t find it worth their while to enter the market, because they’ll just get out-competed.

If Alphabet et al. are actually doing their own innovation, like Bell Labs or Xerox PARC in past decades, then this isn’t that big of a problem. But if it’s merely the threat of big-company competition keeping tech entrepreneurs out of the market, the picture looks worse.

Suppose I have a great idea for a new kind of algorithm to match customers with products. I could start my own online retailer built around that algorithm, but Amazon could just copy it (rather than acquiring my company), so I don’t. Yet in this hypothetical example, since I don’t actually start my startup, Amazon actually doesn’t invent the new recommendation algorithm, and the innovation never gets done!

In other words, big tech companies might be acting like Walmart and Target, but muscling out tech startups rather than mom-and-pop stores. But unlike the retail sector, competition in the innovation space might sometimes leave new ideas unexploited.

The source of the decline in startup dynamism isn’t yet known. More research, and better understanding of the last few years, is needed before any definitive conclusions are reached. But if the tech sector is getting too concentrated, regulators might take a second look at options to reduce the dominance of the big players.

### 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.=

### Populism

#### Inequality innev – even without populism

Prins 14 [Nomi Prins Contributor at Truth Dig, 3-11-2014 <http://www.truthdig.com/report/item/the_inevitability_of_income_inequality_20140311>]

There’s been a lot of discussion about the historically high levels of income and wealth inequality lately—mostly from people on the shorter end of that stick—with good reason: There’s no end in sight. In his new book, “Capital in the Twenty-First Century,” economist Thomas Piketty argues that worsening inequality is inevitable in a mature capitalist system, based on his analysis of 200 years of data. But inequality isn’t just an evolving condition like a ~~crippling~~ allergy that comes and goes, or just grows, enumerated by horrifying statistics. Nor is it just the result of a capitalist-utopian idea of free markets in which everyone gets a fair shot armed with equal information (which simply don’t exist in the real world, where markets are routinely gamed by the biggest players). Inequality is endemic to the core structure of an America that operates more as a plutocracy than a democracy. It is an inherent result of the consolidation of a substantial amount of both financial power and political influence in the hands of a few families. In my upcoming book, “All the Presidents’ Bankers,” I trace the lineage of the banking and political families and their associates who have had the most combined influence on American policy. Inequality of income or wealth is a byproduct of the predisposition and genealogy of this coterie of America’s power elite. True, being born into wealth means having a greater chance of accumulating more of it—but take it a step further. Expanding on the adage of “it takes money to make money,” we get a much better idea of why inequality is so rampant: Because aside from income and wealth issues, it takes power to keep power. By nature of the construct and self-reinforcing behavior of a small circle of American families and their enterprises—particularly over the past century since financial capitalism replaced productive capitalism as the means to expand power, wealth and influence—a comparative handful of families and their connections run Wall Street and Washington collectively. They run America as two sides of one political-financial coin, not as divided factions but as co-influencers of policy through public and private office.

## Adv 2

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

#### No internal link – can’t stop Khan post plan

#### 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: Warming I/L

#### Fed not key to warming---SLGs and other countries solve.

Pope 20 (Carl Pope, former chairman of the Sierra Club, Advisor @ the Skoll Global Threats Foundation Climate Learning Initiative, America India Foundation, and the Yale Climate and Energy Institute, “Senate Gridlock Can’t Stop America’s Clean Energy Revolution,” 11/28/20, Bloomberg Opinion, <https://www.bloomberg.com/opinion/articles/2020-11-28/senate-gridlock-can-t-stop-america-s-clean-energy-revolution>, TM)

In naming former Secretary of State John Kerry to become America’s global climate czar, President-elect Joe Biden is wasting no time making emissions reduction a top White House priority. Political observers are already gaming how much Biden will be able to accomplish on climate protection. Will Mitch McConnell lead a Republican Senate to tie up legislation? If the two Georgia Democratic candidates prevail in their runoff elections, can a Chuck Schumer-led Senate bridge divisions among Republican oil minions, progressive climate hawks and moderate “all of the above” straddlers? Either way, the conventional wisdom runs, President Biden will have a hard time delivering on his pledge to decarbonize the U.S. power and road-transportation sectors on the way to achieving a 100% clean energy economy by mid-century. My bet is that Beltway political gridlock won’t be such a big problem — just as Trump’s presidency wasn’t as big an obstacle to progress as it once appeared. Just after this month’s election, a friend sent me a blog post I wrote four years ago in the wake of the Trump triumph, noting how accurate my predictions on climate under a Trump presidency had proved to be. I checked and was surprised by how close I got. But even back then there was reason to assume that Trump’s desperate efforts to preserve the coal industry would be undone by the economic reality of the fuel’s collapsing profitability. And it was possible to hope that congressional battles between climate deniers and progressive advocates of emissions reduction would be overshadowed by the clean-energy momentum of American cities, states and businesses — along with international government mandates to lower emissions. Even then, wind and solar power were undercutting coal and gas generation. Today electric batteries have become cheap enough to leave gasoline and diesel-powered vehicles in the dust. And an emerging competition between hydrogen and electricity is preparing to decarbonize heavy industry, which emits the final third of global greenhouse-gas pollution. Cities, states and businesses are seizing the economic opportunities these shifts provide. Just this week, it was announced that the aptly named Samson Solar Energy Center — at 1300 megawatts, the biggest in the U.S. — would be built in Texas, of all states. This is the result not of a government mandate, but of power purchase agreements among four Fortune 500 corporations and three moderate-size Texas municipalities, all wanting the 20 years of guaranteed cheap power that Samson promises. And this happened during Trump’s presidency. It’s hard to imagine a Republican Senate deprived of the White House turning back the clean-energy tide that’s transforming the U.S. power sector, and electrifying cars, trucks and buildings. Climate-industrial innovators, as I call them, represent most of the U.S. economy and half of the country’s emissions. As Biden reverses the White House course on climate, American society will outpace whatever he and Congress can do. Even so, the U.S. no longer leads the world on climate policy. Europe took post position with its green stimulus. And the Covid-19 pandemic has extinguished any long-term future for fossil fuels. Within five weeks of Europe’s action, China, Japan and Korea all committed to zero carbon economies before 2060. As the global transition to clean energy accelerates, the supply chains and investment dollars on which the U.S. economy depends will shift further from fossil fuels — whatever politicians might prefer. Take transportation. As the world’s big vehicle manufacturers — European, Chinese, Korean and Japanese — stop investing in internal combustion engines, even countries that haven’t made ambitious climate pledges (Saudi Arabia, Russia) will nonetheless buy electric vehicles, because they will be better and cheaper. American manufacturers, required by California’s zero-emission coalition to produce a low-carbon fleet for half the country, will put pressure on Congress to support a national transition to electric cars and trucks. And as research and development dollars flood into EVs, and dry up for internal combustion engines, EV performance advantages will improve even as prices continue to fall. This is not to say that Biden’s ambition doesn’t matter. It does — not so much for how many American drivers get behind the wheel of a zero-emission car, but for where that car gets made. Biden and Congress may not determine the pace of the clean-transportation revolution, but they can help determine its leadership.

### 1NC---AT: Warming !

#### No warming impact

Lehr 19 – Jay Lehr, Ph.D. in Groundwater Hydrology from the University of Arizona, and Tom Harris, Executive Director of the International Climate Science Coalition, “Global Warming Myth Debunked: Humans Have Minimal Impact on Atmosphere’s Carbon Dioxide and Climate”, Western Journal, 2-14, <https://www.westernjournal.com/global-warming-myth-debunked-humans-minimal-impact-atmospheres-carbon-dioxide-climate/> [language modified]

Global warming activists argue carbon-dioxide emissions are destroying the planet, but the climate impacts of carbon dioxide are minimal, at worst. Activists would also have you believe fossil-fuel emissions have driven carbon-dioxide concentrations to their highest levels in history. The Obama-era Environmental Protection Agency went so far as to classify carbon dioxide as a toxic pollutant, and it established a radical goal of closing all of America’s coal-fired power plants.

Claims of unprecedented carbon-dioxide levels ignore most of Earth’s 4.6-billion-year history. Relative to Earth’s entire record, carbon-dioxide levels are at historically low levels; they only appear high when compared to the dangerously low levels of carbon dioxide that occurred in Earth’s very recent history. The geologic record reveals carbon dioxide has almost always been in Earths’ atmosphere in much greater concentrations than it is today. For example, 600 million years ago, when history’s greatest birth of new animal species occurred, atmospheric carbon-dioxide concentrations exceeded 6,500 parts per million (ppm) — an amount that’s 17 times greater than it is today.

Atmospheric carbon dioxide is currently only 410 parts per million. That means only 0.04 percent of our atmosphere is carbon dioxide (compared to 0.03 percent one century ago). Only one molecule in 2,500 is carbon dioxide. Such levels certainly do not pose a health risk, as carbon-dioxide levels in our naval submarines, which stay submerged for months at a time, contain an average carbon-dioxide concentration of 5,000 ppm.

The geologic record is important because it reveals relationships between carbon-dioxide levels, climate, and life on Earth. Over billions of years, the geologic record shows there is no long-term correlation between atmospheric carbon-dioxide levels and Earth’s climate. There are periods in Earth’s history when carbon dioxide concentrations were many times higher than they are today, yet temperatures were identical to, or even colder than, modern times. The claim that fossil-fuel emissions control atmospheric carbon-dioxide concentrations is also invalid, as atmospheric concentrations have gone up and down in the geological record, even without human influence.

The absurdity of climate alarmism claims gets even stranger when you consider there are 7.5 billion people on our planet who, together, exhale 2.7 billion tons of carbon dioxide each year, which is almost 10 percent of total fossil-fuel emissions every year. However, we are but a single species. Combined, people and all domesticated animals contribute 10 billion tons.

Further, 9 percent of carbon-dioxide emissions from all living things arise not from animals, but from anaerobic bacteria and fungi. These organisms metabolize dead plant and animal matter in soil via decay processes that recycle carbon dioxide back into the atmosphere. The grand total produced by all living things is estimated to be 440 billion tons per year, or 13 times the amount of carbon dioxide currently being produced by fossil-fuel emissions. Fossil-fuel emissions are less than 10 percent of biological emissions. Are you laughing yet?

Every apocalyptic pronouncement you hear or read is [totally wrong] ~~nothing short of insanity~~. Their primary goal is not to save plants, humans, or animals, but rather to use climate “dangers” as a justification for centralizing power in the hands of a select few.

#### No impact to warming.

Cliff Mass 19. American professor of Atmospheric Sciences at the University of Washington. His research focuses on numerical weather modeling and prediction, the role of topography in the evolution of weather systems, regional climate modeling, and the weather of the Pacific Northwest. 8-12-19. “Is Global Warming an Existential Threat? Probably Not, But Still a Serious Issue.” https://cliffmass.blogspot.com/2019/08/is-global-warming-existential-threat.html. DOA: 3-25-2020. kyujin. Edited for gendered language [denoted with brackets]

An existential threat is one that threatens the very existence of [hu]manankind. Something that is a simply a challenge or an inconvenience is not an existential threat. An existential threat must have the potential to undermine the very viability of human civilization. As described below, global warming is a serious problem and its impacts will be substantial – but in no way does it seriously threaten our species or human civilization. And with reasonable mitigation and adaptation, [hu]mankind will continue to move forward – reducing poverty, living healthier lives, and stabilizing our population. What do current climate models tell us? These models are run under specific scenarios of emission of CO2 and other greenhouse gases (see figure). In one, RCP8.5, we simply continue doing what we are doing, with escalating use of coal and oil. Not much renewable energy. Many believe this scenario is too pessimistic. Much more reasonable is RCP 4.5, which has modestly increased emissions through 2040, declining after 2050. I suspect this one will be closer to reality. The implication of these emissions on global temperature is shown below based on a collection of climate models (CMIP-5). Under the extreme scenario, the earth warms by about 4C, but for the reasonable one (RCP4.5), global warming is about 2C (3.6F). This warming will not be uniform, being greater in the polar regions, less over the eastern oceans. You will note the temperature rise in RCP 4.5 is relatively steady through around 2045 and then starts to gradually plateau out. No sharp transitions, no falling off of a cliff, no sudden catastrophes. I have run a large collection of high resolution climate simulations over the Northwest, driven by the aggressive RCP 8.5 scenario. As shown for Seattle's mean annual temperature below, there is a steady rise, again with no sudden changes that would be hard to adapt to. Most NW folks will want to purchase an air conditioner for summer, but there is no threat to our existence, and winters will be more pleasant. But what do official international and national evaluations project for the economic future? First, let's check the conclusions of the highly respect Intergovernmental Panel on Climate Change (IPCC), which provides a consensus view of many scientists and nations. Their analysis (SR15, Chapter 3) quoted a paper by Yohe (2017) that found a U.S. GDP loss of 1.2% per degree of warming, So with a 2 C global warming associated with RCP4.5, we are talking about a 2.4% loss of national income in 2100. Not a 2.4% loss from today's levels, but 2.4% less of the substantially greater income in 2100. What about the recently released Fourth National Climate Assessment, a document heavily cited by the U.S. environmental community? Their analysis is that the damage to the U.S. economy in 2100 would be about a 1% loss (see below) This is not a 1% loss from the current U.S. gross domestic product (GDP), but a 1% loss of the substantially great GDP in 2100. We will be much richer in 2100, and will lose 1 % of our GDP because of global warming. Doesn't sound like the end of civilization, does it? W. D. Nordhaus, who won a Nobel Prize in economics for his study of the economic impacts of climate change, examined a large number of studies regarding the impacts of global warming on the world's economy (see below). He and his co-author (A Moffat) found that a 2C increase in global temperatures would result in 0-1% damage to the world economy in 2100. Doubling the warming would only increase the damage to around 3%. Again, no existential threat. Reading these numbers and considering the many reports backing them up, there clearly is no existential threat to either the U.S. or mankind from global warming, leaving one to wonder why are so many politicians, environmental activists, and lots of media are spreading this existential threat line. And the above studies are not really considering the potential for major technical breakthroughs in energy generation (e.g., fusion), renewables energy sources, or carbon removal form the atmosphere (sequestration). I believe that such advances are inevitable, just as no one in 1950 expected that 2000 would bring personal computers, cell phones, and more. You also have to wonder whether scientists, politicians, and environmental folks really believe the existential threat warnings they throw around. Many talk the talk, but most don't walk the walk. Presidential candidates with little chance of securing the nomination are flying back and forth around the country, resulting in enormous carbon footprints. Climate scientists fly more for work and pleasure than anyone. Many environmentalists oppose nuclear power, one of the technologies that could produce massive carbon-free energy. And several local Washington State environmental groups opposed a revenue-neutral, bipartisan carbon tax initiative (I-732). Global warming is a real issue and we are going to slowly warm our planet, resulting in substantial impacts (like less snowpack in the Cascades, increased river flooding in November, drier conditions in the subtropics, loss of Arctic sea ice). But the world will be a much richer place in 2100 and mankind will find ways to adapt to many of the changes. And there is a good chance we will develop the technologies to reverse the increasing trend in greenhouse gases and eventually bring CO2 concentrations down to previous levels. Global warming does not offer an existential threat to mankind, and politicians and decision makers only undermine their credibility and make effective action less likely by their hype and exaggeration. And their unfounded claims of future catastrophe prevents broad national consensus and hurts vulnerable people who are made anxious and fearful. And just as bad, all this end of the world talk results in folks turning away from the issue, both out of fear and from intuition that a lot of hype is going on.

# Block

## 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---Solvency---Recuttings

#### 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

#### The warrant for market uncertainty is no new guidance---coutnerplan solves green.

**Pepper 21**, “FTC Meeting Opens the Door to a Period of Greater Uncertainty,” JDSUPRA, July 8, 2021, <https://www.jdsupra.com/legalnews/ftc-meeting-opens-the-door-to-a-period-1845988/>

Last week the Federal Trade Commission (FTC or Commission) held its first open Commission meeting in over 20 years. Chair Lina Khan led the meeting and promised future open meetings of the Commission on a "regular" basis. Commissioners Phillips and Wilson, however, expressed concerns with the format, complaining about short notice, failure to circulate final versions of relevant proposals, lack of opportunity to ask questions to staffers, and lack of discussion among commissioners. Commissioner Wilson summarized her concerns as "when we have chaos instead of thoughtful process, it is the American consumer who will suffer."

The FTC voted on four items, two of which will directly affect agency antitrust enforcement. In a 3-2 decision along party lines, the Commission withdrew its 2015 Statement of Enforcement Principles Regarding "Unfair Methods of Competition" Under Section 5 of the FTC Act (2015 Statement). [1] The FTC issued the 2015 Statement in response to repeated pleas from the legal and business community for greater clarity on the meaning of Section 5's "unfair methods of competition" language. The guidance sought to provide companies the ability to design and implement lawful programs and practices that can often provide benefits to consumers, even though such practices also might have the effect of making it more difficult for other firms to compete. The 2015 Statement announced that in deciding whether to challenge an act or practice under Section 5, the Commission would apply a framework, and the Commission would exercise its "standalone" Section 5 authority to address acts or practices that are anticompetitive but may not fall within the scope of the Sherman or Clayton Act. For example, it provided that the consumer welfare standard would guide FTC prosecution decisions.

Speaking in favor of withdrawal of the 2015 Statement, Chair Khan described the statement as "doubl[ing] down on the agency's long-standing failure to investigate and pursue unfair methods of competition." According to Chair Khan, the 2015 Statement contravened congressional intent because it made the FTC's broader authority under Section 5 largely coterminous with the Sherman Act and constrains the expert FTC to liability standards made by generalist judges in treble damages cases. Khan went on to say the 2015 Statement largely made standalone Section 5 authority a dead letter because it required the Commission to prove "likely" anticompetitive effects. "Importing the rule of reason's likelihood requirement would prevent the Commission from combatting incipient wrongdoing before it becomes likely to harm competition." Although the FTC based its claims against Facebook on Section 2, some commenters have cited the recent dismissal of that complaint as evidence of the too stringent standards employed to antitrust claims by "generalist judges." See U.S. District Court Dismisses Government Actions Against Facebook.

The FTC offered no replacement guidance for the withdrawn 2015 Statement, but Chair Khan stated that in the coming months, the Commission will consider whether to issue new guidance or to propose rules regarding actions that warrant scrutiny under Section 5. Commissioner Wilson spoke against the rescission of the 2015 Statement, noting that it was issued during the Obama administration with broad consensus that reflects judicial precedence and the input of scholars. Commissioner Noah Phillips also opposed the motion, stating that withdrawal of the 2015 Statement could lead to unchecked powers in the FTC.

The FTC also voted 3-2 in favor of seven omnibus resolutions, permitting only a single Commissioner to compel production of documents, information, and testimony in certain investigations. These resolutions will be in effect for 10 years unless rescinded at an earlier date by a future Commission. The resolutions authorize compulsory process in investigations in certain concentrated industries, such as technology platforms, health care, and pharmaceuticals; cases that target workers and operators in small businesses; investigations of infractions of statutes related to COVID-19; investigations of mergers; and greater use of compulsory process when investigating repeat offenders. This last resolution would permit requests from third parties and adjacent acts involving repeat offenders. Commissioners Wilson and Phillips raised concerns that these resolutions would remove oversight and accountability over the FTC in some of the biggest and most expensive investigations.

The tenor of the meeting and the actions taken send a clear message to businesses, particularly those of a significant size. Although it is too early to know exactly how the FTC will apply its enhanced enforcement tools, how broadly it will interpret Section 5's prohibition of unfair methods of competition, or the extent or type of harm, if any, it will deem worthy of challenge, in light of the withdrawal of the consumer welfare standard, there are a number of initial action items companies should consider or for which they should be prepared.

### 2NC---AT: Non-Del Deficit

#### Lawsuits are based on a broad interpretation of power

**Brandom 21,** “Federal Trade Commission expands antitrust powers in Chair Lina Khan’s first open proceeding,” The Verge, July 1, 2021, https://www.theverge.com/2021/7/1/22559131/ftc-open-meeting-antitrust-chair-lina-khan-sherman-act-powers

In the most aggressive effort, the commission voted to rescind a 2015 “Statement of Enforcement Principles” that restricted the FTC Act’s prescriptions on “unfair methods of competition” to explicit violations of existing antitrust law (specifically the Sherman and Clayton Acts). The vote proceeded along party lines, passing 3-2 with Democrats in the majority.

“In practice, the 2015 statement has doubled down on the agency’s longstanding failure to investigate and pursue unfair methods of competition,” said Khan, introducing the motion.

Without that restriction, the FTC will be free to pursue lawsuits against misconduct that might not violate classical antitrust law. The commission is still considering whether to replace the statement with blanket guidelines or an array of more specific rulemaking against particular practices.

Rescinding the 2015 order remains controversial among pro-business groups and is likely to face a legal challenge.

“A clear majority of the Supreme Court has expressed their intention to revive the non-delegation doctrine, which holds that only Congress may make laws,” said the pro-business think tank TechFreedom in a statement in advance of the vote. “The FTC might well wind up as the first test case for that long-dormant doctrine if it departs from the clear principles developed by the courts under antitrust law.”

#### Setting Section 5 guidelines for “unfair competition” boosts clarity and refines FTC legal standards.

Salop ‘13

Steven C. Salop, Professor of Economics and Law, Georgetown University Law Center - “Guiding Section 5: Comments on the Commissioners” -Scholarship @ Georgetown Law - #E&F - https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2284&context=facpub

FTC Commissioners Joshua Wright and Maureen Ohlhausen have proposed that the Commission adopt Guidelines for the application of Section 5 to Unfair Methods of Competition (“UMC”).2 These UMC Guidelines would apply to non-merger conduct that may not violate the Sherman Act. Agency Guidelines can provide a useful role in defining the scope of agency enforcement intentions and providing guidance to the business community, outside counsel, and agency staff.3 They also can lead to more refined legal standards. This short note will comment on the role of Section 5 distinct from the Sherman Act and how this relates to the Commissioners’ proposed Guidelines.

#### The counterplan sets a clear interpretation---solves uncertainty about the 2015 rollback thing that their ev is about

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.

#### Interpretive guidance doc WILL NOT EVN CONFRONT COURT CHALLENGES. Courts won’t overturn THEM – even if they want to do so – SOLVING THE ftc ADV.

Seidenfeld ‘11

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

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

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

### 2NC---Condo---Short

## Tech

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

#### No US/China war – relatively high relations/low hostility, trade networks, cooperation on mutual issues, peaceful military postures, lack of public support for conflict and empirics – answers miscalc and accidental war

Heath 17 ---- Timothy, senior international defense researcher (RAND Corporation), former senior analyst for the USPACOM China Strategic Focus Group, M.A. in Asian studies (George Washington University), B.A. in philosophy (College of William and Mary), Ph.D. candidate in Political Science (George Mason University), written with William R. Thompson who is a Professor of Political Science (Indiana University), “U.S.-China Tensions Are Unlikely to Lead to War,” National Interest, 4/30, <http://nationalinterest.org/feature/us-china-tensions-are-unlikely-lead-war-20411?page=2>

Graham Allison's April 12 article, “How America and China Could Stumble to War,” explores how misperceptions and bureaucratic dysfunction could accelerate a militarized crisis involving the United States and China into an unwanted war. However, the article fails to persuade because it neglects the key political and geostrategic conditions that make war plausible in the first place. Without those conditions in place, the risk that a crisis could accidentally escalate into war becomes far lower. The U.S.-China relationship today may be trending towards greater tension, but the relative stability and overall low level of hostility make the prospect of an accidental escalation to war extremely unlikely.

In a series of scenarios centered around the South China Sea, Taiwan and the East China Sea, Allison explored how well-established flashpoints involving China and the United States and its allies could spiral into unwanted war. Allison’s article argues that given the context of strategic rivalry between a rising power and a status-quo power, organizational and bureaucratic misjudgments increase the likelihood of unintended escalation. According to Allison, “the underlying stress created by China’s disruptive rise creates conditions in which accidental, otherwise inconsequential events could trigger a large-scale conflict.” This argument appears persuasive on its surface, in no small part because it evokes insights from some of Allison’s groundbreaking work on the organizational pathologies that made the Cuban Missile Crisis so dangerous.

However, Allison ultimately fails to persuade because he fails to specify the political and strategic conditions that make war plausible in the first place. Allison’s analysis implies that the United States and China are in a situation analogous to that of the Soviet Union and the United States in the early 1960s. In the Cold War example, the two countries faced each other on a near-war footing and engaged in a bitter geostrategic and ideological struggle for supremacy. The two countries experienced a series of militarized crises and fought each other repeatedly through proxy wars. It was this broader context that made issues of misjudgment so dangerous in a crisis.

By contrast, the U.S.-China relationship today operates at a much lower level of hostility and threat. China and the United States may be experiencing an increase in tensions, but the two countries remain far from the bitter, acrimonious rivalry that defined the U.S.-Soviet relationship in the early 1960s. Neither Washington nor Beijing regards the other as its principal enemy. Today’s rivals may view each other warily as competitors and threats on some issues, but they also view each other as important trade partners and partners on some shared concerns, such as North Korea, as the recent summit between President Donald Trump and Chinese president Xi Jinping illustrated. The behavior of their respective militaries underscores the relatively restrained rivalry. The military competition between China and the United States may be growing, but it operates at a far lower level of intensity than the relentless arms racing that typified the U.S.-Soviet standoff. And unlike their Cold War counterparts, U.S. and Chinese militaries are not postured to fight each other in major wars. Moreover, polls show that the people of the two countries regard each other with mixed views—a considerable contrast from the hostile sentiment expressed by the U.S. and Soviet publics for each other. Lacking both preparations for major war and a constituency for conflict, leaders and bureaucracies in both countries have less incentive to misjudge crisis situations in favor of unwarranted escalation.

To the contrary, political leaders and bureaucracies currently face a strong incentive to find ways of defusing crises in a manner that avoids unwanted escalation. This inclination manifested itself in the EP-3 airplane collision off Hainan Island in 2001, and in subsequent incidents involving U.S. and Chinese ships and aircraft, such as the harassment of the USNS Impeccable in 2009. This does not mean that there is no risk, however. Indeed, the potential for a dangerous militarized crisis may be growing. Moreover, key political and geostrategic developments could shift the incentives for leaders in favor of more escalatory options in a crisis and thereby make Allison’s scenarios more plausible. Past precedents offer some insight into the types of developments that would most likely propel the U.S.-China relationship into a hostile, competitive one

featuring an elevated risk of conflict.

#### Tensions won’t escalate to conflict – geography, lack of motive, and resilient relations-- answers China rise, their historical appeals, new weapons, and either US or Chinese-initiated war

Moeller 15 ---- Joergen Oerstroem, Visiting Senior Fellow at the Institute of Southeast Asian Studies (Yusof Ishak Institute, Singapore), Adjunct Professor (Singapore Management University & Copenhagen Business School), 10/29, <http://www.huffingtonpost.com/joergen-oerstroem-moeller/war-in-asia-unthinkable_b_8415838.html>

What does vital interest plus capability and willingness to challenge or defend supremacy tell us looking at the U.S. and China through today’s periscope?

First of all they do not threaten each other’s vital interest. They are safe. Geography makes an armed conflict impossible.

Militarily the U.S. enjoys a colossal geographic benefit ensconced in the Western Hemisphere with no enemies. Recalling the time it took and the drain on logistics to move half a million men into the Middle East to wage war in 1991 and 2003 a U.S. military attack on China falls in the category of not thinkable. China is surrounded by India, Russia, and Japan with a land border traditionally difficult to defend and the sea offering trade routes as well as invasion routes. China’s military capability may be growing but recalling necessity to defend China’s borders, the advantages geography offer to the U.S., and the starting positions for measuring relative military power any rational analysis concludes that no military threat to U.S. vital interests is thinkable. Comparing China today to Germany and the U.S. to Britain 100 years ago is fascinating, but not relevant. So far, if a comparison is sought, China is much more akin to Bismarck’s Germany moving slowly and weighing every step fully aware of the balance of power not wishing to upset it even if striving to enhance its own role.

The Napoleonic wars, the run up to World War I, and the run up to World War II reveal that the established power and the rising power do not bump into each other with a bang in the revolving door. In all three cases a string of negotiations and attempts to find a modus vivendi dominated the picture.

The Napoleonic Wars included the Revolutionary Wars stretched from the beginning of the 1790s to 1815, but it was not one long war — far from it. There were seven coalitions whereof five from 1803 when Britain entered the arena in earnest; periods of peace, admittedly unstable, interrupted war. The question was whether France and Britain could find out how to live with each other; only when that proved impossible was the war taken to a battle for supremacy with Britain as the winner.

Prior to 1914 the same pattern is visible. Numerous publications including Norman Angell’s ‘The Great illusion’ from 1909 classified war as futile explaining that no advantages or benefits flowed from waging major wars in an era of strong trade and investment links. The book influenced British political thinking prior to 1914 and despite rising tensions with Germany successive governments tried to shape a mutually acceptable power balance. An example of this maneuvering was the British proposal in 1912 (the Haldane mission) for a moratorium on battleship building. It failed for various reasons, but underline that great powers actually diagnose confrontations and implement policies to prevent them from escalating.

The appeasement policy pursued by Prime Minister Chamberlain in the late 1930s illustrates the same behavior. He went a long way to see whether Britain could accommodate Nazi-Germany.

The by far most likely scenario for U.S.-China relationship over the next decades is continued negotiations to adjust and adapt to a new power balance. There may be skirmishes also of military character but with lightning speed diplomacy will be mobilized to contain such events. There may be armed conflicts using proxies to test each other but kept under control. In new areas such as cyber warfare and space ‘rules of engagement’ or ‘conduct’ - written or unwritten - will be formulated as nuclear weapons not only introduced MAD (Mutual Assured Destruction), but also common understanding between the U.S. and the Soviet Union about how to manage the power game under such conditions. Cyber warfare and space may technologically be new, they do not, however, change the parameters of the power game: Measure capability and willingness of your ‘enemy’ to threaten vital interests.

It seems a fair bet to rule out major armed conflicts in Asia while a merciless rivalry about trade, investment, money and probably also societal model will rule the agenda.

#### No US-China war – economic costs and nuclear deterrence

Monterio 18 [Nuno P. Monteiro is an Associate Professor of Political Science at Yale University, 9-13-2018 http://www.nunomonteiro.org/wp-content/uploads/Monteiro-Debs-2018-An-Economic-Theory-of-War.pdf]

With the end of WWII, two factors have reduced the odds of great power conflict, consistent with our theory. First, nuclear weapons have raised the cost of war. Second, the institutionalization of trade has increased the cost the United States would pay to constrain another country’s economic growth.14

Applying these lessons to the U.S.-Soviet rivalry, we see that there was little economic incentive for a direct confrontation. Both countries controlled significant markets for goods and resources. Furthermore, the two blocs traded little between them, limiting their ability to restrict each other’s access to the resources they needed for economic growth. In light of the potential destruction that nuclear war would bring about, fighting over additional markets would be highly unlikely to result in faster growth for either superpower. Despite the intense rivalry between the two, competition between them never broke into direct military conflict.

The explanation for war we introduce is also able to account for smaller conflicts. For example, the United States decided to use force to expel Iraq from Kuwait in 1991 in part out of concern that, were Iraq to launch an offensive over Saudi oil fields in close proximity to Kuwait, it would impact U.S. access to oil – and its cost – putting Saddam Hussein in a position that allowed him to constrain U.S. economic growth. Going back in history, our mechanism may also account for the dynamics at play in wars of colonial conquest. A stronger state may want to launch a war so as to gain control over a weaker territory’s resources, which it can then invest more efficiently. This dynamic may have contributed to European states scrambling to acquire territory overseas.

Looking ahead, we can use our framework to analyze the odds that U.S.-China relations will remain peaceful. Given both countries’ nuclear status, the costs of war remain particularly high. Furthermore, and although China possesses a large and growing domestic market, Beijing is relatively dependent on access to international markets for its economic growth. This could present a problem for peace. At the same time, Washington would pay a high cost to attempt to restrict Chinese access to these markets particularly given China’s membership in the World Trade Organization. As long as these fundamental features of U.S.-China economic interactions remain, the economic dimension of U.S.-China relations will continue to be a force for peace.

### 2NC---AT: Inequality !

#### Alt causes

Leung 15 May Leung, “The Causes of Economic Inequality” Seven Pillars institute https://sevenpillarsinstitute.org/causes-economic-inequality/

(i) Wages are determined by labor market

Wages are a function of the market price of skills required for a job [1]. In a free market, the “market price of a skill” is determined by market demand and market supply. The market price of a skill, and hence the wage for the job that requires the skill, is low if a large number of workers (high supply) are willing and able to offer that skill but only a few employers need it (low demand). On the contrary, when there is low supply but high demand for a skill, the wage for a job requiring the skill goes up.

(ii) Education affects wages

Individuals with different levels of education often earn different wages [2]. This is probably related to reason one: the level of education is often proportional to the level of skill. With a higher level of education, a person often has more advanced skills that few workers are able to offer, justifying a higher wage.

The impact of education on economic inequality is still profound in developed countries and cities [3]. Although there are usually policies of free education in developed nations, levels of education received by each individual still differ, not because of financial ability but innate qualities like intelligence, drive and personal ability. For example, in Hong Kong, 12 years of free education are provided for each citizen, not covering tertiary education, offered only when students receive certain results on public exams.

Moreover, receiving the same level of education does not mean receiving education of the same quality. This accounts for the difference in abilities and hence wages for individuals all receiving, for example, 12 years of education. Therefore, it seems no matter how good the social welfare policy of a country is at preventing denial of education due to financial difficulties, differences in education, in terms of levels and quality, still play a prominent role in economic inequality.

## FTC

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

#### Khan is making a power grab---plan’s limitations won’t restrain her and I/Ls are inev. GREEN

**Wright 21** [Joshua Wright, JD/PhD, Former FTC Commissioner, Professor of Antitrust Law at George Mason, Lina Khan Is Icarus at the FTC, July 13, 2021, https://www.wsj.com/articles/lina-khan-ftc-monopoly-big-tech-11626108008?mod=searchresults\_pos2&page=1]

It’s a touch ominous when a bureaucrat begins her tenure by sending bipartisan procedural safeguards to the paper shredder. Federal Trade Commission Chairman Lina Khan wasted no time making confetti of the guardrails at the FTC, including the Obama administration policy statement placing minimal limits on how the agency could use its theretofore undefined power to police “unfair methods of competition.” Shredding the statement clears the way for Ms. Khan’s attempt to remake antitrust law in her image (“Lina Khan’s Power Grab at the FTC,” Review & Outlook, July 6). With the announcement of a global gag order on FTC staff, Ms. Khan has made it clear the FTC will now speak with one voice—hers. All that has been overshadowed by an executive order aimed at competition and loaded with goodies, good intentions, new regulatory regimes and a blissful ignorance of unintended consequences (“Joe Biden, 20th Century Trustbuster,” Review & Outlook, July 10). Some of its pronouncements, like occupational-licensing reform, are to the good. But the FTC’s competition authority is about to become a free-for-all for the Biden administration to reshape the economy. One wonders how the Republicans going along with all this to “get Big Tech” are feeling right now; I’m guessing “played.” If not, they’ll catch up soon enough. Imagining the FTC as Icarus flying without the constraints of history, economics or law is a fun thought experiment, but we’ve been here before. Ms. Khan’s initial steps are indicative of a regulatory overreach that will end with the FTC’s wings melting in the courts. This path does not lead to incremental, much less radical, change. I predict early headlines that appease a rabid base, frustration for FTC staff and a new, volatile partisanship at the agency, but actual results that leave unsatisfied the progressives aching for radical change.

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

#### Warming doesn’t rise to extinction – new studies.

Nordhaus 20 Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. [Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816]//BPS

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is a real climate debate bubbling along in scientific journals, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But most pessimists do not believe that runaway climate change or a hothouse earth are plausible scenarios, much less that human extinction is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. A richer world will also likely be more technologically advanced, which means that energy consumption should be less carbon-intensive than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that global economic growth over the last decade has reduced climate mortality by a factor of five, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But recent forecasts also suggest that many of the worst-case climate scenarios produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also very unlikely. There is still substantial uncertainty about how sensitive global temperatures will be to higher emissions over the long-term. But the best estimates now suggest that the world is on track for 3 degrees of warming by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy made a modest has comeback in Asia.

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

## DA---PTX

### O/V

### 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.

### AT: Thumper – Infra/Budget

#### Debt ceiling’s a higher priority for Biden

Stratas 9-9-21 (Stratas Foods, “Morning Market Comments,” Market News, Cheney Brothers Inc., 9-10-2021, https://www.cheneybrothers.com/newsletter/CHENEYBROTHERSMARKETNEWS.PDF)

Macroeconomics

Red across the board for the three major indices. The Dow dropped 69points to end at 35,031 while the S&P fell6 points to 4,514. The NASDAQ didn’t buck the trend of the other two and went red for 88 points to 15,286.

In the news, the Beige Book was re-leased and showed that growth in the American economy slowed along with the rise of the Delta variant. Moving forward the news clippings will be focused on the debt ceiling or more importantly the raising of the debt ceiling. The 3.5T infrastructure bill is a priority for the Biden administration after the debt ceiling discussions. Right now, the bill wouldn’t pass but the margin is close. If I was a betting man, I wouldn’t count on the full 3.5T passing but a pared down amount probably will.

#### AND, even if infrastructure’s NOT delayed, debt ceiling and CR still get a vote first anyway

Kilgore 9-11-21 (Ed Kilgore, former senior fellow at the Progressive Policy Institute, former policy director for the Democratic Leadership Council, political columnist for New York magazine, managing editor of the Democratic Strategist, “The Looming Government Shutdown and Debt Default ‘Cliffs’,” Intelligencer, New York Magazine, 9-11-2021, https://nymag.com/intelligencer/2021/09/government-shutdown-and-debt-default-cliffs-loom-ahead.html)

Even for an institution prone to let obligations pile up like the dirty laundry of procrastinating adolescents, Congress has outdone itself this year in creating an autumn logjam. There is, of course, House passage of the trillion-dollar infrastructure bill already cleared by the Senate, along with the multi-trillion dollar budget reconciliation bill to which it is inextricably linked, which must be enacted in both Houses. There is no immediate deadline for these all-important items, though Speaker Nancy Pelosi has promised to take up the infrastructure bill by September 27, which means steady progress first on the immensely complicated reconciliation bill so that one doesn’t pass while the other falls apart. There’s also a defense authorization bill due by the end of the month. And Pelosi wants a vote on a national abortion rights bill asap, so that it has time to go over to the Senate and die to a Republican filibuster.

The thing that must happen by the end of September is some action on appropriations to keep the federal government open, presumably by a stopgap “continuing resolution,” since Congress isn’t getting any of the 13 regular FY 2022 appropriations bills done when the new fiscal year begins on October 1. House Majority Leader Steny Hoyer has now told Members to expect a vote on a stopgap bill the week of September 20, extending current appropriations until December.

According to a previous decision by congressional Democrats, the plan is to connect an increase or suspension in the public debt limit to appropriations, nestling the unpopular debt measure into the must-pass spending bill. Since Treasury Secretary Janet Yellen told the world earlier this week that action on the debt limit had to happen before the end of October at the latest, that means the stopgap bill had better include it. Otherwise the federal government will default on its obligations and the world financial system will collapse, which would be unpleasant.

### AT: EMs

#### Regardless of how long Treasury can last, markets expect it to ride the CR – if not, they’ll overreact and trigger financial collapse

Kilgore 9-11-21 (Ed Kilgore, former senior fellow at the Progressive Policy Institute, former policy director for the Democratic Leadership Council, political columnist for New York magazine, managing editor of the Democratic Strategist, “The Looming Government Shutdown and Debt Default ‘Cliffs’,” Intelligencer, New York Magazine, 9-11-2021, https://nymag.com/intelligencer/2021/09/government-shutdown-and-debt-default-cliffs-loom-ahead.html)

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The implications of these scheduling decisions is that Congress will be at the edge of not one but two “cliffs” as the end of the month nears: one involves the government shutdown that will occur if appropriations are not extended, and the other involves a debt default that will occur if that breached limit is not addressed then or very soon afterwards. Trouble is, Senate Republicans are vowing not to provide any votes for a debt limit increase or extension so long as Democrats persist in godless socialism in the rest of their agenda, and without bipartisan support the measure would succumb to a filibuster. So Democrats are calling their bluff. If Republicans stare them down and refuse to do the right thing then the country could fall into the double abyss of a non-functioning government and an imperiled financial system. You know, alongside a COVID-19 pandemic, economic jitters, continuing threats of insurrection, and the legislative legacy of the Biden presidency.

What Republicans want Democrats to do instead of going to the brink on spending and debt is to put a debt limit measure into the aforementioned unresolved budget reconciliation bill, which if all goes as planned will be enacted on strict party-line votes in both congressional chambers. This would let Republicans claim they had virtuously opposed both socialism and the socialist debt, while letting the stopgap spending bill slip through and avoiding a financial meltdown, too. But even if they wanted to go along with this GOP scheme, which they don’t, the timing is off; the reconciliation bills may not be ready to pass by the time Yellen signals that her department’s “extraordinary measures” of money-juggling have run out and calamity awaits. It was to avoid this kind of mess that motivated both parties in Congress along with the Trump administration to agree on a two-year don’t-rock-the-boat budget deal in 2019. Unfortunately the deal expired on August 1, and now it’s time again for brinkmanship. It won’t be fun unless you like to watch middle-aged (and older) pols in suits attempt high-wire acts without a net.

#### Unpredictable cash flow and high balance are rapidly decreasing the timeline – makes uncertainty-driven miscalc likely – and certainly can’t make it to November

Ivandjiiski 9-13-21 (Daniel Ivandjiiski, aka Tyler Durden, U.S.-based former investment banker and capital-markets trader, financial blogger and founder and main editor of Zero Hedge, “Goldman Sounds Red Alert Over The Debt Ceiling: "Upcoming Deadline Looks As Risky As The 2011 Debt Limit Fight",” Zero Hedge, 9-13-2021, <https://www.zerohedge.com/markets/goldman-sounds-red-alert-over-debt-ceiling-upcoming-deadline-looks-risky-2011-debt-limit>)

On Friday, with some segments of the bond market starting to grow increasingly nervous about the outcome of the debt ceiling debate - whose "drop dead date" is expected to fall some time between late October and early November - we laid out the two two scenarios how this particular upcoming drama could proceed in the weeks and months ahead.

But first a reminder what repo expert Scott Skyrm said, noting that "for the past several years, Congress always reached a compromise before the possibility of a "technical default" creeped into the markets. This year, as we get closer to the "drop dead date" (which hasn't yet been determined) the markets will start pricing in distortions."

And indeed they are doing just that, with the kink in the Bill curve representing the D-Day starting to gradually shift forward, from early November as of last week...

... to mid-October today, as Wrightson ICAP now expects the so-called drop-dead date -- when the government’s cash and extraordinary measures run out - to be around Oct. 22. The kink is a result of higher yields on bills that come due around the debt ceiling D-Date as investors ask for more compensation for the added risk.

By contrast, it’s possible that as short-term yields rise, yields on longer-dated Treasuries will drop amid haven demand, JPMorgan strategists wrote on Friday: “Yields on bills may move higher and coupon yields may move lower the longer the debt limit remains unresolved,” JPMorgan's Alex Roever wrote in a note Friday.

So backing up, this is what we said were the two big challenges facing Congress if the Senate Democrats are unable to raise the debt limit as part of a spending bill, and go down the reconciliation process to pass it with only 51 votes

* First, it is unclear whether all Senate Democrats would vote for a revised budget resolution that increases the debt limit by several trillion dollars. if Democrats use the reconciliation process, Senate rules would probably allow them only to raise the debt limit by a specific dollar figure, which would lead to more politically problematic headlines, rather than suspend it for a period of time, which has become the norm over the last decade as it does not lead to a specific dollar amount at the time of passage.
* Second, the current reconciliation process to pass as much as $3.5 trillion in new spending is already underway, with House committees already in the process of considering and passing their segments of the bill in committee. Revising the budget resolution, which governs that process, could interfere with consideration of that legislation, and would likely take at least a couple of weeks, if not longer. If Democrats wait until Sep. 30 to test support for a debt limit increase as part of the spending bill, they might not have sufficient time to go through all of the procedures necessary to revise the resolution before the debt limit deadline.

And while the Treasury Department continues to play it cool, saying it has no plan to sort through which payments it would prioritize in case of a default, and which U.S. government obligations it would set aside once it exhausts measures to avoid breaching the federal debt limit, Wall Street disagrees. More from Bloomberg:

The Treasury isn’t engaging in discussion of what would happen if Congress fails to suspend or increase the debt limit, which kicked in at $28.4 trillion at the beginning of August following a two-year suspension. Yellen said earlier this week that extraordinary measures to avoid breaching the limit will only last until sometime in October.

The U.S. “pays all its bills on time,” Treasury spokeswoman Lily Adams said Wednesday. “The only way for the government to address the debt ceiling is for Congress to raise or suspend the limit, just as they’ve done dozens of times before.”

However, in a worst-case scenario when the Drop-Dead Date arrives without a deal on the table, the options of prioritizing payments on publicly held U.S. Treasuries, or delaying some debt-payment dates, are still technically on the table, Wall Street strategists are telling their clients. Bolstering this view, during a 2017 round of problems over the debt limit, Moody’s said it expected the Treasury to turn to prioritizing debt servicing over other obligations if needed.

Confidence that debt payments would be prioritized also stems in part from a once-secret debt-limit contingency plan from the Obama administration that Secretary Janet Yellen’s team is at this point saying it won’t tap according to Bloomberg. Details were discussed by Federal Reserve officials during highly contentious battles over raising the debt ceiling in 2011 and 2013, as shown in transcripts of Fed conference calls.

“What the transcripts tell me is that the Treasury is able to prioritize payments,” said BofA head of interest rate strategy Mark Cabana, however their willingness to do so “is a separate question. Even if you just acknowledged the possibility, it would be very politically unpopular to say you are going to essentially pay China and Japan over paying Social Security recipients." Cabana also projected the Drop-Dead Date could happen by early November, but he’s assuming Congress lifts it or suspends it again before that.

The problem in a nutshell, is that while everyone expects some miraculous debt ceiling deal will occur just before the deadline, this may not happen.

In a worst case scenario, even if payments were sustained on Treasuries, defaulting on some of the myriad of other government obligations, from Social Security to paying for regular federal government operations, could badly damage perceptions of U.S. sovereign credit quality. Back in 2011, S&P downgraded the U.S. after a protracted if ultimately successful battle to lift the debt limit. Amid another such struggle two years later, Fitch Ratings put the U.S. on negative watch. Fitch went on to remove the designation in 2014, before putting it back on in July 2020.

Mark Zandi, chief economist at Moody’s, said that if that did come to pass, it would raise U.S. borrowing costs nevertheless given the damage of failing to make good on other obligations, even if just for a limited period.

“There’s a not-inconsequential risk in this go-around that there’s a mistake here -- and a default,” Zandi said in a phone interview Thursday. “I’m sure Treasury is looking at all kinds of break-glass scenarios” such as prioritization, he said. “But this is break-glass stuff, which means we’d be in a crisis and it would be cataclysmic and we’d be going off the rails.”

Putting it all together, this morning Goldman's economists have published another note on the upcoming debt ceiling showdown, explaining why contrary to generally cheerful sentiment that the problem will resolve itself. Here are the highlights:

We estimate Congress will need to raise the debt limit by mid-October, though it is possible the Treasury might be able to operate under the current limit until late October. It is possible, though not likely, that the Treasury might be able to continue to make all scheduled payments until sometime in early November if the deficit is smaller than expected.

There are two procedural routes congressional Democratic leaders can take to raise the debt limit, but neither is easy. Democrats would not need Republican support if they use the reconciliation process, but they would face a number of other procedural and political disadvantages. Attaching a debt limit suspension to upcoming spending legislation looks more likely, but this might not succeed and could lead to a government shutdown.

A failure to raise the debt limit would have serious negative consequences. While it seems likely that the Treasury would continue to redeem maturing Treasury securities and make coupon payments, if Congress does not raise the debt limit by the deadline the Treasury would need to halt more than 40% of expected payments, including some payments to households.

Beyond the direct impact, the debt limit could also affect the medium-term outlook for fiscal policy. We already expect the Democratic fiscal package to be scaled back from the proposed $3.5 trillion/10 years in new spending to $2.5 trillion, offset by around $1.5 trillion in new tax revenue. While there is not necessarily a direct linkage between the debt limit and the fiscal package, the more these issues become entangled the more pressure there may be from centrist Democrats to scale back the size of the fiscal package.

Stepping back for a second, we remind readers that calculations for the Treasury "drop dead date" are fluid and depend on tax revenues as well as outlays. While consensus expects the debt limit to be hit by mid-October, Goldman calculates that the Treasury may be able to operate under the current debt limit until the end of October. If revenues surprise to the upside - the September 15 corporate tax deadline should provide new information - or outlays surprise to the downside, it is possible, though not likely, that the Treasury might be able to continue to make all scheduled payments until sometime in early November.

In addition to complications arising from unpredictable cash flows, this time around there is also the Treasury’s higher-than-usual cash balance which adds further ambiguity. In the past, the Treasury’s projection of the date by which Congress needs to raise the debt limit has assumed a minimum level that the cash balance must not drop below (e.g. $25bn). Since the cash balance is usually much smaller than it has been over the last year, the main determinant of the deadline was the size of the deficit relative to the “extraordinary measures” that Treasury can employ to make room for additional borrowing under the limit.

This time around, the Treasury started with a cash balance of $459BN when the debt limit was reinstated Aug. 2, much larger than ahead of prior debt limit deadlines. This has declined to around $200BN as of Friday. In this context, Goldman notes that in light of greater uncertainty regarding cash flows, "setting a higher minimum cash balance than usual would be prudent. That said, a projection that the debt limit must be raised at the same time that the Treasury has a large cash balance would likely reduce the credibility of the projection and the urgency Congress feels at that point to raise it." The deadline is likely to fall in October regardless, we believe, but a more conservative (higher) assumption regarding the cash balance could put the deadline earlier in the month, while a lower assumption would put the deadline closer to the end of the month.

### 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.”

### 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.

#### 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.

### I/L – Floor Time

#### Independent of PC, provoking an unexpected dispute costs too much floor time – the delay alone triggers our impacts

Romm 9-8-21 (Tony Romm, congressional economic policy reporter at The Washington Post, former senior technology reporter for Politico and senior editor for policy and politics at Recode, BA Journalism, American University, “Democrats confront numerous hurdles as they work to advance $3.5 trillion economic package,” The Washington Post, 9-8-2021, <https://www.washingtonpost.com/us-policy/2021/09/08/democrats-september-debt-ceiling-reconciliation/>)

House Democrats are set to begin writing significant swaths of their $3.5 trillion tax-and-spending plan on Thursday, even as new political fissures among their ranks threaten to complicate its path to passage.

The days ahead are likely to be grueling for the party’s lawmakers, who are about to embark on the tough task of translating President Biden’s broader economic agenda into law. To start, Democrats intend to focus their efforts on proposals to expand Medicare benefits, authorize new family and medical leave programs and make child care and community college more affordable.

But Democrats are starting their legislative slog at a precarious time politically, as the party’s liberal and moderate factions increasingly snipe at each other over the price tag and policy scope of their still-forming bill.

On one side are lawmakers including Sen. Bernie Sanders (I-Vt.), who initially hoped to spend even more than $3.5 trillion over 10 years — and maintains a strong preference for aggressive policy changes, particularly in areas like health care. Opposite are centrists such as Sen. Joe Manchin III (D-W.Va.), who has signaled he may support a tax-and-spending package only if it is closer to half the size of what Democrats have proposed.

The tensions spilled into public view Wednesday, less than a week after Manchin called on Congress to hit “pause” on the efforts. Senate Majority Leader Charles E. Schumer (D-N.Y.) rejected the idea in a news conference, reiterating the need for lawmakers to “all come together to get something big done.”

The early disputes threaten to complicate Democrats’ attempts to reach consensus quickly. With other potential political crises brewing — including a battle over government funding and Washington’s ability to pay its debts — the ticking clock only adds to the pressure facing the party’s leaders in September.

“It is no great secret that you’ve got 200-plus members of the House and there are disagreements there. We have 50 members in the Senate, there are disagreements there. What we are trying to do is unprecedented probably in the last 50 or 60 years,” Sanders said. “This is tough stuff.”

For Democrats, the process over the next few days to resolve their policy differences is critical. The party possesses only a slight advantage in both the House and Senate, so it cannot afford defections — even as it prepares to rely on a legislative maneuver known as reconciliation to sidestep a Republican filibuster.

But the potential for internal bickering remains high given the vast scope of the agenda that Democrats seek to adopt. That includes an expansion of Medicare benefits to cover dental, vision and hearing. House Democrats have proposed delaying the dental coverage until 2028, sparking criticism from Sanders, who said that would be too slow.

Along with changes to Medicare, Democrats also seek in reconciliation to overhaul the immigration system to help millions obtain lawful permanent resident status, including those who came to the United States as children and are often referred to as “dreamers.” And lawmakers are pursuing a major expansion of federal safety-net programs, hoping to help millions of Americans afford school, take sick and parental leave and enroll their kids in child care services. Democrats intend to pay for these and other programs through tax hikes targeting corporations and wealthy Americans.

For months, party lawmakers relied largely on substantive outlines as they made grand proclamations about the economic benefits their plans would provide. But they must now turn their early thinking into a detailed bill, a process beginning Thursday that has exposed fresh fault lines.

The primary battle concerns the package’s price tag, as Manchin and other moderates raise fears that as much as $3.5 trillion in spending could worsen the deficit and contribute to inflation. Democrats say they intend to cover the costs of their measure in full, but Manchin has maintained privately that the number still may be too high.

Instead, the West Virginia Democrat in recent days has told peers he might support only as much as $1.5 trillion package, according to a person familiar with the matter who spoke on the condition of anonymity to describe his thinking. Axios first reported on the senator’s views.

Slashing Democrats’ spending — perhaps by as much as half — would force party lawmakers to scale back some of their policy aspirations. The issue has been top of mind for lawmakers including Rep. Robert C. “Bobby” Scott (D-Va.), leader of the House Education and Labor Committee, one of the panels set to convene Thursday to begin its work on reconciliation. Entering the session, Scott’s panel has put forward a roughly $450 billion plan meant to improve the country’s child care programs, along with policies that would grant millions of Americans access to paid leave and improve aging schools.

“In this package, you are limited by the top line,” he said in a recent interview.

Privately, some Democrats have acknowledged this week they may have no choice but to whittle down their spending as they try to assuage moderates’ concerns. But aides to liberal-leaning lawmakers, who spoke on the condition of anonymity to describe their bosses’ thinking, stressed that a package as low as $1.5 trillion is essentially a nonstarter — a pledge that dooms any bill at that size.

Appearing at a news conference Thursday, House Speaker Nancy Pelosi (D-Calif.) appeared to acknowledge both of her party’s factions. “I don’t know what the final number will be,” she said. “But we have to talk about what does that take? Where would you cut child care, family medical leave paid for, universal pre-K, home health care?”

Similar intraparty squabbles have plagued the tax-focused House Ways and Means Committee, which is also set to begin its work to craft critical portions of the reconciliation bill on Thursday. Within its mandate is Medicare, setting up a fierce debate among Democrats who want to ensure that dental coverage and other benefits are delivered swiftly.

A proposal from Rep. Richard E. Neal (D-Mass.) provides vision and hearing benefits in 2022 and 2023, respectively. But it phases in the dental benefits starting in 2028, troubling Sanders and other Democrats who could attempt to tweak the proposal in the days to come.

“During the past year, 75 percent of those relying on Medicare who needed a hearing aid did not have one; 70 percent who had trouble eating because of their teeth did not go to the dentist; and 43 percent who had trouble seeing did not have an eye exam,” Rep. Lloyd Doggett (D-Tex.), who oversees the health subcommittee, said in a statement.

He added that “cost is the big concern” delaying the dental benefits — not just for the panel but for seniors as well because some Medicare beneficiaries under the proposal stand to see significant bills anyway.

Otherwise, the panel has not endeavored to lower the eligibility age for Medicare, a costly idea some Democrats have pursued. It also has yet to reveal its fuller plans for extending a series of health-care subsidies favored by Pelosi and her allies — though a Democratic aide, speaking on the condition of anonymity to describe the panel’s plans, said Wednesday that lawmakers will address the issue in the coming days. Neal’s panel also soon faces the thorniest fight of all — how to pay for as much as $3.5 trillion in new spending.

With no shortage of disputes to resolve, Democrats are running up against a fast-ticking clock in September, a month full of fiscal and economic challenges and key deadlines. Lawmakers must pass a bill before the end of the month to fund government operations to prevent a shutdown, and Democrats have said they hope to authorize additional spending in response to two recent, deadly hurricanes.

Adding to the urgency, Treasury Secretary Janet Yellen on Wednesday informed Congress that it had less time than it anticipated to address the debt limit before the U.S. government runs out of money and special measures to pay its bills. The new deadline is probably in October, she said, imploring lawmakers not to wait “until the last minute” to address the risk.

“A delay that calls into question the federal government’s ability to meet all its obligations would likely cause irreparable damage to the U.S. economy and global financial markets,” Yellen wrote in her letter to Congress.

Democrats have sought the help of Republicans to raise or suspend the debt ceiling, citing the fact that they did so to prevent a crisis under President Donald Trump. But GOP lawmakers have refused to supply the necessary votes under Biden, as they bristle over Democrats’ plans to seek as much as $3.5 trillion in new spending and tax increases they oppose.

The GOP’s resistance drew fresh criticism from Democratic leaders Wednesday, who recalled that the last stalemate over the debt limit nearly brought the country to default, rattling the global economy. At a news conference, Schumer called the Republicans’ approach a “despicable act,” adding that Democrats are exploring a “number of different ways” to address the problem.

### 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.

### AT: !/D – No War – Pandemic Magnifier

#### None of their defense assumes a financial crisis during a pandemic – uniquely risks nuclear, chem and bio wars

RECNA, et al 20 (Research Center for the Abolition of Nuclear Weapons, Nagasaki University (RECNA); the Asia-Pacific Leadership Network (APLN); and Nautilus Institute; “Pandemic Futures and Nuclear Weapon Risks: The Nagasaki 75th Anniversary Pandemic–Nuclear Nexus Scenarios,” 12-17-2020, p.7-10, <http://nautilus.org/wp-content/uploads/2020/12/Pandemic-Futures-Nuclear-Risks-v5.pdf>)

The Challenge: Multiple Existential Threats

The relationship between pandemics and war is as long as human history. Past pandemics have set the scene for wars by weakening societies, undermining resilience, and exacerbating civil and inter-state conflict. Other disease outbreaks have erupted during wars, in part due to the appalling public health and battlefield conditions resulting from war, in turn sowing the seeds for new conflicts. In the post-Cold War era, pandemics have spread with unprecedented speed due to increased mobility created by globalization, especially between urbanized areas. Although there are positive signs that scientific advances and rapid innovation can help us manage pandemics, it is likely that deadly infectious viruses will be a challenge for years to come.

The COVID-19 is the most demonic pandemic threat in modern history. It has erupted at a juncture of other existential global threats, most importantly, accelerating climate change and resurgent nuclear threat-making. The most important issue, therefore, is how the coronavirus (and future pandemics) will increase or decrease the risks associated with these twin threats, climate change effects, and the next use of nuclear weapons in war.[5]

Today, the nine nuclear weapons arsenals not only can annihilate hundreds of cities, but also cause nuclear winter and mass starvation of a billion or more people, if not the entire human species. Concurrently, climate change is enveloping the planet with more frequent and intense storms, accelerating sea level rise, and advancing rapid ecological change, expressed in unprecedented forest fires across the world. Already stretched to a breaking point in many countries, the current pandemic may overcome resilience to the point of near or actual collapse of social, economic, and political order.

In this extraordinary moment, it is timely to reflect on the existence and possible uses of weapons of mass destruction under pandemic conditions—most importantly, nuclear weapons, but also chemical and biological weapons. Moments of extreme crisis and vulnerability can prompt aggressive and counterintuitive actions that in turn may destabilize already precariously balanced threat systems, underpinned by conventional and nuclear weapons, as well as the threat of weaponized chemical and biological technologies. Consequently, the risk of the use of weapons of mass destruction (WMD), especially nuclear weapons, increases at such times, possibly sharply.

The COVID-19 pandemic is clearly driving massive, rapid, and unpredictable changes that will redefine every aspect of the human condition, including WMD—just as the world wars of the first half of the 20th century led to a revolution in international affairs and entirely new ways of organizing societies, economies, and international relations, in part based on nuclear weapons and their threatened use. In a world reshaped by pandemics, nuclear weapons—as well as correlated non-nuclear WMD, nuclear alliances, “deterrence” doctrines, operational and declaratory policies, nuclear extended deterrence, organizational practices, and the existential risks posed by retaining these capabilities —are all up for redefinition.

A pandemic has potential to destabilize a nuclear-prone conflict by incapacitating the supreme nuclear commander or commanders who have to issue nuclear strike orders, creating uncertainty as to who is in charge, how to handle nuclear mistakes (such as errors, accidents, technological failures, and entanglement with conventional operations gone awry), and opening a brief opportunity for a first strike at a time when the COVID-infected state may not be able to retaliate efficiently—or at all—due to leadership confusion. In some nuclear-laden conflicts, a state might use a pandemic as a cover for political or military provocations in the belief that the adversary is distracted and partly disabled by the pandemic, increasing the risk of war in a nuclear-prone conflict. At the same time, a pandemic may lead nuclear armed states to increase the isolation and sanctions against a nuclear adversary, making it even harder to stop the spread of the disease, in turn creating a pandemic reservoir and transmission risk back to the nuclear armed state or its allies.

In principle, the common threat of the pandemic might induce nuclear-armed states to reduce the tension in a nuclear-prone conflict and thereby the risk of nuclear war. It may cause nuclear adversaries or their umbrella states to seek to resolve conflicts in a cooperative and collaborative manner by creating habits of communication, engagement, and mutual learning that come into play in the nuclear-military sphere. For example, militaries may cooperate to control pandemic transmission, including by working together against criminal-terrorist non-state actors that are trafficking people or by joining forces to ensure that a new pathogen is not developed as a bioweapon.

To date, however, the COVID-19 pandemic has increased the isolation of some nuclear-armed states and provided a textbook case of the failure of states to cooperate to overcome the pandemic. Borders have slammed shut, trade shut down, and budgets blown out, creating enormous pressure to focus on immediate domestic priorities. Foreign policies have become markedly more nationalistic. Dependence on nuclear weapons may increase as states seek to buttress a global re-spatialization[6] of all dimensions of human interaction at all levels to manage pandemics. The effect of nuclear threats on leaders may make it less likely—or even impossible—to achieve the kind of concert at a global level needed to respond to and administer an effective vaccine, making it harder and even impossible to revert to pre-pandemic international relations. The result is that some states may proliferate their own nuclear weapons, further reinforcing the spiral of conflicts contained by nuclear threat, with cascading effects on the risk of nuclear war.