# NEG Wiki Doc---Texas R6

# 1NC

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

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

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

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

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

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

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

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

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

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

#### Voting issue---key to link uniqueness and preventing bidirectionality on an otherwise virtually unlimited topic. Failure to specify an agent is a voter – kills neg ground and decimates topic education.

### 1NC---CP

CONDITIONS

#### Counterplan:

#### Without increasing prohibitions on anticompetitive business practices, the United States federal government should implement the recommendations of the Peskoe 21 evidence, conditioning approval of transmission capital expenditures by private electricity corporations on ceding operational control to independent planners and waiving antitrust immunity defenses.

OFFICIAL CLARIFICATION FOR REFERENCE:

#### --announce and implement a presumption that transmission capital expenditures by private electricity corporations are prudent only when

#### ----transmission capital expenditures are committed pursuant to an independently administered planning process,

#### ----private electricity corporations waive regulatory antitrust immunities,

#### ----private electricity corporations disclose all transmission information relevant to planning processes,

#### ----private electricity corporations invoking rights of first refusal adopt the terms and conditions proposed by the developer awarded the project by the regional transmission organization through its competitive process,

#### ----and private electricity corporations do not impose discriminatory rate structures and non-price barriers to distributed energy resources;

#### --subject all other transmission expenditures to a prudence review

#### ----including consumer advocates, generation developers, rival electricity corporations, and entities advocating for deployment of technologies that can obviate new transmission,

#### ----prioritizing distributed energy resources and grid resilience in project selection;

#### --where transmission is independently planned, mandate that planners

#### ----independently verify the accuracy of disclosed transmission information,

#### ----prioritize distributed energy resources and grid resilience in project selection,

#### ----engage third-party evaluators to oversee the project selection process,

#### ----and where planners use the solicitation model to select project developers, require them to hand that function to a third party;

#### --preempt state siting authority;

#### --and provide sufficient staff and appropriations to the Federal Energy Regulatory Commission to conduct this oversight.

#### Solves case without expanding the scope of antitrust laws

Peskoe 21 (Ari Peskoe, Director of the Electricity Law Initiative at Harvard Law School, “Is The Utility Transmission Syndicate Forever?” Energy Law Journal, 42(1), 2021, https://www.eba-net.org/assets/1/6/5\_-\_%5BPeskoe%5D%5B1-66%5D.pdf)

V. TO TRIGGER FURTHER PLANNING REFORMS, FERC SHOULD DISCIPLINE IOU LOCAL TRANSMISSION SPENDING

It is difficult to change the direction of large electric power systems—and perhaps that of large sociotechnical systems in general—but such systems are not autonomous. Those who seek to control and direct them must acknowledge the fact that systems are evolving cultural artifacts rather than isolated technologies. As cultural artifacts, they reflect the past as well as the present. Attempting to reform technology without systematically taking into account the shaping context and the intricacies of internal dynamics may well be futile. If only the technical components of a system are changed, they may snap back into their earlier shape like charged particles in a strong electromagnetic field. The field also must be attended to; values may need to be changed, institutions reformed, or legislation recast.385

The power sector has changed since the days when the benefits of unchecked IOU coordination outweighed the potential advantages of open competition. New technologies, market structures, operational methods, and public policy goals have since taken the industry into once unforeseeable directions. Transmission development should evolve to meet these needs. To the extent that there was ever any rationale for bestowing upon local monopolists the collective responsibility of shepherding the development of our interstate networks, those justifications are no longer valid. IOUs are creatures of the early twentieth century, designed to focus on their state-granted service territories. Their local purpose and local monopolies should not constrain the evolution of the nation’s transmission systems. Twenty-five years ago, FERC finally confronted IOU transmission dominance, ordering reforms that restructured the industry. Ten years ago, FERC attempted to unleash competitive regional transmission development, but obstructionist IOUs, claiming entitlements to perpetual local transmission monopolies, have evaded competition by changing rules and retreating to non-competitive development processes. I propose that FERC spark bottom-up reforms by targeting IOU-run local planning.

Procedural reforms in Order No. 890 require IOUs to share information about their local plans in order to facilitate public participation and scrutiny. But FERC itself fails to examine IOUs’ transmission development plans or subsequent investments. Implicitly, it relies on other parties to discipline IOU spending. This abdication of its core ratemaking authority is an unjustified giveaway to IOUs that biases them in favor of non-competitive local investments over larger scale projects or more cost-effective non-transmission technologies.386

FERC should reverse its longstanding adoption of a presumption that all transmission expenses are prudent387 and replace it with a presumption that only capital expenditures committed pursuant to an independently administered planning process are prudent. For all other transmission expenses, FERC should place the burden of proof to establish prudence back on IOUs in any section 205 filing seeking transmission rate increases.388 FERC’s prudence review is necessary to protect customers and ensure just and reasonable rates.389 A heightened standard of review is sensible where FERC’s planning oversight is less robust and the development process is controlled by the IOU seeking the rate increase.

To implement this policy change, FERC should craft a policy, embodied in a policy statement or developed through a rulemaking,390 that delineates requirements of “independently administered” planning, outlines how IOUs can demonstrate prudence, and provides limited exceptions related to reliability, the dollar value of projects, or other metrics. The policy should also address how FERC’s prudence review will apply to formula rates391 and whether FERC will end, on a prospective basis, its policy allowing state regulation of transmission rates when they are included as part of a bundled retail rate.392 Placing the burden on IOUs is clearly within FERC’s legal authority. Section 205 explicitly states that an IOU seeking to increase rates has the burden to prove that its proposal is just and reasonable.393 FERC ought to insist that IOUs meet the statute’s explicit command by proving prudence in their section 205 filings.

The specter of FERC’s prudence review could have significant effects on transmission planning. Ideally, FERC’s policy would convince IOUs to place all transmission planning — regional and local (subject to carve-outs allowed under the policy) — under the control of an independent entity.394 In transmission operations, separating ownership from operational control allowed the industry to capture benefits of both coordination and competition. Separating ownership from control over planning could have similarly significant benefits by untethering planning from IOU’s state-granted advantages. In addition, unifying local and regional planning could finally achieve the promise of Order No. 1000 by leading to more cost-effective portfolios of projects.395

**[FOOTNOTE 394]**

394. Opponents of independent planning might argue that FERC does not have authority to regulate entities in non-RTO regions because they that are not “public utilities” under the FPA. In non-RTO regions, the regional planning entities do not file tariffs with FERC. IOUs participating in those regional processes met their Order No. 1000 obligations by amending their own OATTs. See, e.g., Avista Corp., et al., 143 F.E.R.C. ¶ 61,255 (2013). These regional planning entities do not meet FERC’s “independence” criteria. Two of these six entities are governed by their member utilities. Three are run by boards with utility and stakeholder members. The remaining organization, ColumbiaGrid, has an independent board appointed by its member utilities, although each of the three current board members is a recently retired executive of a member utility. Review of Recent Regional Plans, supra note 197, at 7; https://www.columbiagrid.org/board-of-directors.cfm. FERC might take one of two approaches to regulating these entities. First, it could continue its practice of regulating regional planning through member IOU filings. While IOUs would retain section 205 rights, they could create procedures that would require them to defer to independent management of the planning entity. Should FERC find that IOUs are interfering with the planning entity, it could conclude that the planning process is not independent and therefore require IOUs to demonstrate prudence. Second, FERC could instead adopt the approach it articulated in the RTG policy statement, where it concluded that although RTGs were not public utilities, their agreements “affect or relate to jurisdictional transmission rates or services” and therefore must be filed under section 205. RTG Policy Statement, supra note 217, at 41,629.

**[/FOOTNOTE 394]**

FERC should take three additional steps to enhance the independence of transmission planners. First, FERC should reduce planners’ reliance on IOUs for information, which might free RTOs from a measure of undue influence that IOUs may currently be able to exert on the planning process. FERC should require IOUs to disclose all transmission information relevant to planning processes and, where transmission is independently planned, mandate that planners independently verify the accuracy of that information.396 Second, FERC should order planners to engage third-party evaluators to oversee the project selection process.397 Third, where planners use the solicitation model to select project developers, FERC should require them to hand that function to a third party. RTOs and other planning entities may be ill-equipped to evaluate development proposals, particularly where their IOU members are competing against other companies.

Even if FERC’s new prudence policy does not induce IOUs to cede planning decisionmaking authority, it may still mitigate IOU transmission dominance. Prudence reviews might include state regulators, consumer advocates, generation developers, rival transmission companies, and entities advocating for deployment of technologies that can obviate new transmission. Information provided by these parties and scrutinized by FERC staff may cause IOUs to propose different projects than they otherwise would. I suspect that, with money on the line, IOUs might disclose more information than they already do pursuant to Order No. 890.

FERC could reject IOU project proposals if it has evidence that consumers would be better served by more cost-effective alternatives. This more pro-active prudence policy would cast FERC as the central planner, a role that it may not be suited to play. To pull it off, it might need additional staff, perhaps housed in a new office dedicated to transmission oversight.398 The goal of the policy, however, is not to plan all transmission development in Washington, D.C., but to spur improvements to planning processes around the country administered by independent entities.

FERC’s prudence policy could also partially mitigate the effects of discriminatory state laws that impede non-IOU transmission development. Following Order No. 1000, several states in the MISO and SPP regions enacted right-of-first refusal laws.399 For example, Minnesota’s ROFR law grants IOUs and other owners of in-state transmission lines rights to build any project planned by MISO that connects to the incumbent transmission owner’s facilities within the state’s boundaries. When the incumbent utility invokes its ROFR, FERC could establish a presumption that the utility’s investment is imprudent unless the utility adopts the terms and conditions proposed by the developer awarded the project by the RTO through its competitive process. This presumption would undoubtedly benefit consumers, as it would effectively force IOUs to either adopt terms and conditions that result from a competitive process or it would lead IOUs to decline to exercise their state ROFRs when they are unwilling to adopt competitively determined terms and conditions.

If IOUs do not voluntarily cede planning to an independent entity, FERC could force IOUs to do so. To justify this move, FERC could point to its recent orders on minimum offer price rules (MOPRs) in capacity markets. In several orders, FERC claimed that to ensure just and reasonable capacity rates it must nullify advantages that states provide to particular resources that offer into the auction.400 While there are numerous factual differences between capacity auctions and transmission development, FERC has identical legal authority under section 206 to remedy unjust and unreasonable rates caused by advantages conferred on particular market participants by state law.401 Applying the MOPR logic to transmission planning, FERC could neutralize advantages that IOUs have in transmission development that are traceable to their exclusive service territories, captive ratepayers, and discriminatory siting laws.

If it chooses not to exercise its newly discovered power to nullify the economic effects of state laws (or if FERC reverses course on MOPRs), FERC could argue that the D.C. Circuit decision rejecting challenges to Order No. 1000 provides a sufficient legal basis for further reforms, including efforts to mitigate IOU advantages in local planning processes. The D.C. Circuit’s decision affirmed that FERC has broad discretion to define unduly discriminatory conduct and remedy such conduct in transmission planning processes.402 The court did not limit FERC’s broad authority to regional planning or establish any legal barrier that prevents FERC from imposing new procedures in local planning, requiring planning be independently administered, or subjugating IOUs’ local planning outcomes to the regional process.

Regardless of whether FERC mandates independent planning or IOUs voluntarily join independently run planning organizations, the efficacy of FERC’s reforms depend in part on states’ cooperation. Many states have been willing participants in IOU efforts to stifle competition.403 Using their nearly exclusive authority over transmission siting, states can effectively veto pro-competitive reforms by refusing to provide siting permission to a non-IOU or out-of-state developer. Indeed, numerous states, often with IOU support,404 have blocked non-IOU transmission development by providing IOUs with ROFRs,405 refusing to site non-IOU projects,406 and rejecting innovative merchant projects that do not align with traditional notions of the “public convenience and necessity” standard that regulators must meet in order to provide siting permission.407

Congress could preempt state siting authority or at least prevent states from enforcing their most anti-competitive laws, such as ROFRs. In 2005, in its first major energy legislation since FERC issued its Open-Access mandate, Congress provided FERC with limited authority to site transmission lines in areas designated by the Department of Energy as having transmission congestion or capacity constraints.408 FERC has never used this siting authority successfully, in part because a federal appeals court interpreted the provisions narrowly.409

In the same bill, Congress also repealed Part I of the 1935 Public Utility Act, paving the way for a wave of utility mergers and perhaps ushering in a new era of IOU transmission dominance.410 The twenty largest U.S.-based publicly traded transmission owners (as measured by miles) have a combined market capitalization of nearly $700 billion (not including Berkshire-Hathaway, the second largest transmission owner that itself is valued at more than $500 billion).411 These companies’ assets are increasingly reliant on cost-of-service ratemaking as several companies have shed competitive lines of business.412 Suffice it to say, these mega-IOUs and their counterparts413 are likely to oppose Congressional action that opens transmission to competition or in some way dilutes IOU control over local transmission development.

With states and Congress seemingly unwilling to oppose IOU dominance, FERC appears most likely to take further action. Yet, I acknowledge that IOUs will inevitably (and rationally) resist further FERC reforms designed to chip away at their transmission dominance. Efforts to dismantle the IOU transmission development “cartels”414 may be delayed through litigation and weakened through implementation. Recognizing the inevitability of IOU backlash, FERC might instead choose to rescind its competitive mandate and direct its reforms towards substantive outcomes, such as motivating more regional investment or incentivizing deployment of new technologies. In that vein, FERC might impose certain technical analyses in the planning process that will cause IOUs and RTOs to select the “right” projects415 or establish particular goals for regional plans to achieve, such as unlocking new resources or connecting regions. Rules that directly target substantive results may have the side-benefit of addressing IOU dominance by ensuring that projects that harm a particular IOU’s parochial interests are nonetheless developed, provided they meet FERC’s technical standards.

Replacing Order No. 1000’s pro-competition procedural reforms with substantive rules engineered to drive IOU investment into FERC-preferred projects may well mitigate IOU backlash and therefore lead to more regional transmission spending, at least in the short term.416 It is worth noting that RTO transmission planning efforts held up as gold standards — MISO’s Multi-Value Projects (MVP) and SPP’s Priority Projects417 — were approved by RTO boards prior to Order No. 1000 and therefore parceled out projects to IOUs without competition.418 Nonetheless, I suggest that while substantive reforms may be necessary, they will be insufficient, and FERC should continue to focus its reforms on IOU transmission dominance for three reasons.

First, FERC has never attempted to dictate substantive outcomes and has in fact explicitly disclaimed that goal.419 Any rule that aims to influence substantive outcomes would have to be robust enough that planners would be unable to subvert FERC’s goal by tailoring the analysis or filtering the results with additional studies designed to either benefit IOUs or achieve results contrary to FERC’s goals. FERC would also run the risk that its rule simply will not work and might result in unintended outcomes.

Second, addressing IOU transmission dominance through procedural reforms aligns with FERC’s expertise, experience, and legal authority. FERC derived its comparability, information transparency, and independence principles from its statutory duty to remedy unduly discriminatory IOU practices and prescribed them as antidotes to IOUs’ anticompetitive behavior. While these principles have proven adaptable, they have not yet liberated transmission development from IOU dominance. Nevertheless, I believe that procedural reforms are necessary, even if FERC also issues substantive rules designed to achieve particular planning goals.

Third, as I have documented throughout this article, IOUs have used their unearned advantages to thwart the development of competitive power markets and transmission development processes. They continue to have incentives and abilities to develop interstate networks that reflect their parochial interests. They are designed to thrive under the status quo, and are ill-suited and unmotivated to facilitate new market entrants and unleash the competitive forces that can allow the sector to realize its innovative potential. Relegating IOUs to participants in the planning process on equal footing with other companies is a necessary step.

Finally, I do not believe that independently administered planning will be a panacea that instantly unlocks innovative transmission projects. Other reforms, particularly to interconnection processes, may be necessary as well.420 FERC might also consider expanding the scope of its independence principle, in part by revisiting allocations of filing rights between RTOs and IOU members.421

**[FOOTNOTE 420]**

420. See MISO, 174 F.E.R.C. 61,084 (2021) (Commissioner Clements, concurring) (“[I] am concerned that the status quo in MISO risks discrimination by transmission owners” in the interconnection process); MISO, 172 F.E.R.C. ¶ 61,248 (2020) (Commissioner Glick, dissenting) (“I remain concerned . . . that the Commission’s determination on remand will provide an opportunity for transmission owners to favor their own generation and create an environment where similarly-situated interconnection customers pay higher network upgrade costs . . . .”); Anbaric Development Partners v. PJM, 171 F.E.R.C. ¶ 61,241 (2020) (denying complaint filed by merchant transmission developer about PJM interconnection rules and setting issues for technical conference); TranSource v. PJM, 168 F.E.R.C. ¶ 61,119 (2019) (reversing ALJ’s conclusion that PJM interconnection practices were nontransparent and unduly discriminatory but finding PJM’s tariff omits material terms on interconnection studies and that PJM made errors in processing interconnection studies); Caspary, et al, supra note 417.

**[/FOOTNOTE 420]**

VI. CONCLUSION

FERC-set rates support the development of more than $20 billion of transmission facilities each year.422 This safe investment opportunity is available primarily — in fact, nearly exclusively — to IOUs. Their incentives to protect their superior access to this lucrative arrangement drive a defensive approach to transmission development that prioritizes projects that they can build without competition and with little oversight. This development model breeds collusion among IOUs who promote transmission rules designed to shield their state-granted territories from outside developers.

FERC’s efforts to break up the IOU transmission clubs have not yet pried control over transmission development from IOUs. FERC’s comparability and transparency principles have mitigated IOU transmission dominance but, without further reforms, the IOU transmission syndicate may indeed be forever. To foster innovation and facilitate development of interstate networks that meet twenty-first century needs, FERC should disentangle transmission planning from IOUs’ financial and strategic interests.

### 1NC---DA

POLITICS

#### Biden’s pursuing Russian détente – key to revitalize multilat and reverse revisionism – BUT renewed Congressional pressure to impose preemptive sanctions on Nord Stream 2 will derail any deal AND trigger invasion of Ukraine – PC’s key to resist

Wertheim 2-3-22 (Stephen Wertheim, senior fellow in the American Statecraft Program at the Carnegie Endowment for International Peace, “With Putin, Biden Should Channel His Inner Realist,” Foreign Policy, 2-3-2022, https://foreignpolicy.com/2022/02/03/putin-biden-russia-ukraine-nato/)

On the surface, Americans have sounded remarkably unified during the months-long showdown that Russian President Vladimir Putin initiated with the West. Most U.S. politicians, policymakers, and commentators blame Putin for threatening aggression in Ukraine and favor a serious response should he follow through. Just about everyone also recognizes that war against Russia—a great power and nuclear peer—cannot be an option.

Look closer, however, and a contest of ideas is underway, both within U.S. President Joe Biden’s administration and outside of it. Familiar camps are taking unusual positions and pulling Biden in opposing directions. On one side are liberal internationalists, who often emphasize soft power and multilateral diplomacy but are now yearning for hard punishments to save Ukraine from falling under Russia’s sway. On the other side of the U.S. debate are the realists, who are known for prescribing just that: power to balance power. In this case though, it’s the realists who think no balance is possible in Ukraine—given Russia’s advantages. They favor diplomatic compromise between Washington and Moscow without even the threat of force.

Caught in the middle is Biden. He is showing pragmatic, realist instincts in wanting negotiations to succeed and war to be averted, but he or his advisers do not appear to be following these instincts to their logical conclusions. With the standoff threatening to turn into a major conflict in Europe, it’s time to be decisive.

Liberal internationalism can mean many things, but it typically holds that states should establish rules and norms to govern international relations and avoid war. When a state breaks the rules, liberal internationalists grow conflicted: Should the rest of the world accommodate the violator’s concerns or use coercion to punish transgression? In the face of Putin’s threats, liberal internationalists prominent in the U.S. policy conversation are vacillating between these two stances but are increasingly inclined toward the latter. They are portraying Russia as a rogue regime—except that hardly anyone wishes to accept the full implications of facing an all-out aggressor that can be contained only by military force.

Ivo Daalder, president of the Chicago Council on Global Affairs and former U.S. ambassador to NATO, follows this train of thought. “Promising an end to NATO enlargement or withdrawing forces from the east will not stop Putin,” he writes. Whatever is motivating Putin to be aggressive—Daalder says it’s Russia’s intolerance of its neighbors’ independence, some stress Putin’s fear of democracy, and others point elsewhere—liberal internationalists suggest that Putin’s Russia may be immutably aggressive, bent on dominating Ukraine and pushing further no matter what. If so, diplomacy stands little chance of preventing war. Even if diplomacy was to succeed for a while, Putin could hardly be trusted to uphold any agreement he made. Former U.S. ambassador to Russia Michael McFaul hopes Putin’s successor will be more reasonable, allowing a rules-based order to be restored—but whether or when such a figure will arrive remains unknown.

In the current crisis, moreover, some internationalists see enormous stakes at play. At a minimum, Putin is threatening what U.S. Secretary of State Antony Blinken calls “core principles that we are committed to uphold and defend—including Ukraine’s sovereignty and territorial integrity and the right of states to choose their own security arrangements and alliances.” Others go further, fearing a new Russian invasion would upend Europe’s security, even though Ukraine is not a member of NATO, and sow disorder everywhere. In this vein, retired U.S. Navy Adm. James Stavridis, former military head of NATO, claims a Russian takeover of Ukraine would “set the international system back decades.” Evelyn Farkas, a former U.S. Defense Department official, believes that Russian gains in Ukraine could give China a free hand to invade Taiwan. If the world’s democracies then prove toothless, she writes, “the rules-based international order will collapse.”

If the enemy is implacable and the stakes are truly so high, the solution seems clear: Contain Russia by presenting it with coercive power sufficient to deter or deny its aims in Ukraine. Yet the use of force in Ukraine is off the table, as Biden stated early in the crisis. It would mean a ruinous great-power war. Nor will Ukraine receive the protection of NATO membership in the foreseeable future. For good reason, then, liberal internationalists who say Putin must be stopped shrink from the one measure that could create the balance of power they suspect they need: a U.S. or European commitment to fight in Ukraine’s defense. Instead, they are hoping to provide Kyiv “with all the weapons and capabilities it needs to defend itself,” as Daalder puts it.

The problem is that no conceivable amount of Western military support is likely to allow Ukraine to defeat a determined Russian offensive. Ukrainian forces are trained and equipped to fight separatists in the east, not Russia’s world-class military. To the New York Times, Stavridis spoke of aiding a Ukrainian insurgency on a scale that would “make our efforts in Afghanistan against the Soviet Union look puny by comparison,” but his tough talk envisages only tactics of desperation. Travel down this path, and the Biden administration will find itself making symbolic shows of support for Ukraine through belated weapons deliveries and blistering rhetoric. That would not stop a war but could make it slower and deadlier.

Although the administration is currently rushing weapons shipments to Kyiv, Biden has not pretended to look for a true counterweight to Russian power in Ukraine. Instead, he has adopted a pragmatic, largely realist view of the crisis. From the outset, realists have recognized that Russia has greater interests in Ukraine and more resolve to fight for them than the United States and its allies ever will. Rather than attempt in vain to balance Russia on the battlefield, they want the United States to play a different game: Prevent an invasion through diplomacy and compromise, with the aim of reaching a modus vivendi.

Within the administration, it is Biden, himself, who has done the most to articulate a realist perspective. In a recent press conference, he frankly admitted that Russia’s military possesses “overwhelming superiority” in Ukraine. Far from depicting his Russian counterpart as irrational or obstinate, Biden called Putin an “informed individual” who has yet to make up his mind about an invasion and will base his decision on the short- and long-term consequences for Russia. Biden aims to shape those incentives through carrots and sticks. He laid out a choice for Putin: Move into Ukraine and face a potential quagmire, new economic sanctions, and increased NATO deployments in Eastern Europe; or make a deal in which at least some of Russia’s demands can be met. “You bite your nose off to spite your face,” Biden said of Russian behavior. Yes, he was reasoning with Putin—but not out of trust. Biden simply seeks to test whether the interests of their two countries might be able to align just enough to avoid a war.

However, it remains to be seen not only if Russia will make a deal but also if Biden is sufficiently committed to a realist approach and willing to spend the political capital to make a deal possible. Thus far, his administration appears unwilling to negotiate one of Russia’s main objectives: foreclosing NATO membership for Ukraine and other former Soviet republics beyond the three Baltic states already in the alliance. Washington has stood firm on the liberal-internationalist principle that NATO’s door should remain open to Ukraine. This could prove to be a self-undermining stance over a norm that is superficial and, in this case, empty.

Ukraine, as realist voices outside the administration point out, has a right merely to apply to join NATO. Existing members have every right to say no. Indeed, NATO has consistently declined to provide Ukraine with a membership action plan that would put it on a path to enter the alliance, despite muddying the waters by announcing in 2008 that Ukraine would one day join. It would be extraordinary if diplomacy failed because NATO refused to make clear that it would not do what it does not wish to do under any foreseeable circumstances. Even if the formal, permanent ban demanded by Moscow goes too far, Biden has ample room to surpass his recent statement that Ukraine is “not very likely” to join NATO in the “near term.” The moment has come, if it has not already passed, for Biden to apply his realist instincts more fully.

Fundamental principles are at stake in Ukraine: the right of states to be sovereign and independent and the obligation of states to resolve disputes peacefully. Those are the principles to put front and center before the world. But states can support international principles in different ways. Wielding coercive power as their self-appointed enforcer is only one of these.

Another is to set an example, pursue limited and legitimate interests, and nurture international conditions that will sustain the rules to the extent possible. Taking such a course could allow Biden to translate his realist inclinations into coherent policy while advancing a version of internationalism that no longer relies on U.S. dominance. After all, if the United States and Russia can find a diplomatic path forward, they would likely agree to strengthen arms control measures and revive bilateral and multilateral dialogues. They could also potentially break the deadlock over Ukraine’s separatist conflict. Such achievements would benefit almost everyone, not just the United States. They could even begin to throw into reverse the decades-long and increasingly dangerous descent into zero-sum rivalry between Russia and the West.

None of this will become possible unless Biden embraces his inner realist. In the worst-case scenario—a massive Russian assault on Ukraine—Biden’s realism will remain essential to prevent the conflict from escalating. His liberal-internationalist critics will deem their worst suspicions of Russia to be confirmed, regardless of whether the United States had ever made an adequate offer in diplomatic negotiations. Against them, Biden will have to argue, forcefully, that events in Ukraine will not unravel the European or global order and create a vital U.S. interest where none has ever existed.

And if Russia backs down instead? Expect many liberal internationalists to claim vindication too. To them, Putin’s months of threats, unjust even if never acted on, are proof that Russia is an aggressor. Some may take Russian de-escalation as evidence that a tougher line would work even better. Members of U.S. Congress could seek to punish Russia in various ways, including by stopping the Nord Stream 2 pipeline from becoming operational. Biden will need to take them on and insist it was his own realist approach that was truly vindicated by events. He will have to highlight the folly of punishing Moscow further, a blunder that would make Russia more likely to launch invasions in the future by giving it less to lose.

The future remains open, Biden might then say; even the United States’ adversaries may make choices based on how it acts toward them. But if Biden wants to reach the more peaceful future he seeks, he will have to be more determined to go down a realist path through serious diplomacy now.

**The plan trades-off**

**Cartensen 21** [Peter C. Carstensen, Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School, LL.B. from Yale Law School, MA in Economics from Yale University, “The “Ought” and “Is Likely” of Biden Antitrust”, Concurrences – Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en]

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. **A**nother 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.

#### Remaining united with Germany on reactive, NOT proactive, sanctions is key to deter Ukraine invasion – global escalation’s uniquely likely this time

--Putin will (mis)interpret proactive sanctions as evidence NATO is fragmented and the US would be going it alone on Ukraine, which actively causes him to decide to invade because he thinks he can take Biden alone – remaining united on the reactive sanctions threat is key to sustaining deterrence

Hodges 12-28 (Gen. Ben Hodges (Ret.), former commander of U.S. Army Europe, currently holds the Pershing Chair in Strategic Studies at the Center for European Policy Analysis; interviewed by Benjamin Parker, senior editor at The Bulwark; “War in Europe Could Be Imminent. Here’s Everything You Need to Know,” The Bulwark, 12-28-2021, https://www.thebulwark.com/war-europe-could-be-imminent-ukraine-russia-putin-biden/)

War looks imminent in Eastern Europe. Russia, which invaded Ukraine in 2014 and has been waging an aggressive war there ever since, has amassed around 100,000 soldiers on Ukraine’s borders in what appear to be preparations for a renewed offensive.

To understand what’s happening, what it means, and what we should do about it, THE BULWARK spoke to Gen. Ben Hodges (Ret.), the former commander of U.S. Army Europe who now holds the Pershing Chair in Strategic Studies at the Center for European Policy Analysis.

[Editor’s note: This interview has been edited for length and clarity.]

TB: How imminent do you think a new offensive is? Could it start tomorrow, or next week, or next month?

Hodges: That’s what all of us are trying to figure out. With all the satellites in the world, you can see stuff, but you cannot see intention necessarily. And that’s the hard part. I would still say that a new offensive is not inevitable, but all the pieces are in place.

What’s most worrisome is the language that keeps coming out of the Kremlin. And here in the last couple of weeks Putin has been talking about genocide in [Russian-occupied] Donbas—and keep in mind that the Russian government has been distributing passports to people in Donbas. This provides perhaps a pretext for sending in military forces to protect these “poor Russians who are being suffering from genocide at the hands of Ukraine.”

At the same time, Russian Defense Minister Sergei Shoygu made this almost cartoonish statement that had private military contractors from the U.S. were in the Donbas with chemical weapons. He’s saying, “We may need to bring nuclear weapons in Belarus,” and issuing constant red lines and unrealistic demands that the Kremlin known are not going to be answered.

I think president Putin has put himself in a corner and he’s going to have to have something to show for all this.

TB: Is that what makes this military buildup different from the one we saw back in April before the Biden-Putin summit? Or are there also technical or military differences that are making people more worried this time?

Hodges: The Kremlin under Putin has not been stopped since 2001. After their 2008 invasion of Georgia, they still occupy 20 percent Georgia, even though they agreed to withdraw. Their support for the Assad regime helped them achieve what they wanted. They’re in Ukraine and they’ve never been stopped. So I think they are operating at a higher than normal level of risk tolerance.

Putin looks at America and the allies, and we still seem a little bit disjointed. You’ve got a brand new German government that just took over a few weeks ago. The British government is in disarray. France has their own elections coming up in April. We are not at our peak right now in terms of unity. He sees mixed messages from Germany, especially about the new gas pipeline from Russia to Germany, Nord Stream II, and he sees mixed messages coming from the White House. I think he sees the possibility that he could separate the United States from Europe and that’s the biggest danger.

I think there’s more opportunity now because a gas is more of a useful weapon in the middle of winter. I mean, it was below zero here in Frankfurt in the last couple of days. And so people start thinking about how cold it is. So their vulnerability to gas as a weapon is at its peak right now.

Secondly, what we saw back in April—all that military hardware pretty much stayed in place. Even the Caspian Sea Flotilla, which they moved to the Sea of Azov, is still there from the spring. They never went back home, and they’ve been conducting amphibious operation rehearsals.

TB: Russian influence in Belarus has significantly changed over the past year and a half. There doesn’t seem to be much in the way of Russia doing whatever they want in Belarus. How has that changed the situation?

Hodges: This adds to the to the complexity and the danger. For a while, I really had wanted to believe that even though Lukashenko was, er, not to be confused with Thomas Jefferson, that he was at least managing to maintain some sort of, uh, independence, and as long as he was able to keep permanent Russian forces out of Belarus, that was good. That’s obviously not going to be the case anymore. I would not be surprised if a regime change in Belarus was part of the whole plan.

I think the Kremlin has their own guy they’re ready to get in there. They know that Europe will not shed a single tear for Lukashenko’s early retirement. But it would really concern our allies in Estonia, Latvia, Lithuania, and Poland.

Also it would expand the vulnerable northern flank that Ukraine would have to cover. If now you’ve got Russian land forces not only north of Kharkiv on the Russian side, but further west from Belarus, this would be very serious. Instead of just facing Russian forces in the two easternmost provinces and in Crimea, they’re also facing amphibious forces in the Black Sea and possible Russian forces on their northern border with Belarus.

Oof course you never know what the mission of those various forces will be. We’ll have to consider all the different threats and risks and possibilities. My expectation is that the Russian forces that are in the Donbas, which are considerable along with the so-called separatists, their job would be to freeze the Ukrainian forces that are in front of them. More mobile formations would emerge from Crimea, perhaps from the north, and certainly amphibious forces in the Sea of Azov and the Black Sea. Then I would expect to see the insertion of airborne forces and helicopter-borne forces, attacks on critical infrastructure, those kinds of things. And obviously this is all happening within the context of massive cyber strikes that would be aimed at paralyzing [shutting down] command and control and decision-making.

And we’d probably see quite a few salvos of sea-launched cruise missiles hitting command and control, depots, critical transportation infrastructure. This is not going to be the “little green men.”

TB: As things stand now, assuming no major changes from the status quo, what are Ukrainian’s hopes of defending itself against this kind of attack? Is it hopeless?

Hodges: Definitely not hopeless. These are not the same Ukrainian armed forces that were kicked out of Crimea almost without a shot.

But they certainly have vulnerabilities. Russia has overwhelming air power and sea power, if it’s just about math. But as you know, from history, war is never just about math. It’s a lot of other factors. You’ve got a significantly more experienced, veteran Ukrainian armed forces. They’ve modernized in several areas. They’ve demonstrated a real toughness and adaptability. They need some of the things that the United States is considering sending, and I hope we will.

The biggest vulnerability I think will be coming from the air, whether it’s missiles or aircraft or helicopters. I worry a little bit about mobility. They they’ve been in a static environment for the most part. Do they have the capacity to move formations around on their interior lines to address where different challenges might be coming from, or to take advantage of opportunity?

On the other side, Crimea is a real bastion for Russia, but it’s also a huge vulnerability. If Ukraine is able to start putting missiles into Sevastopol, that’s a real problem for the Russians—the whole reason they want Crimea is for the port at Sevastopol. If Ukraine lets it be known that they can and will hit targets there, like the important facilities necessary for the Black Sea Fleet, that that is a serious a threat.

There’s another element to Ukraine’s defense, too, and that is the society. People talk about Putin as a genius. But he took his neighbor, the 40 million Ukrainian people that generally were predisposed to be either pro-Russian or tolerant of Russia, and now, thanks to the 2014 invasion, he’s got 40 million people on his southern border that hate him. This notion of Putin’s that somehow the Ukrainians are waiting to be rescued so they can rejoin Russia is a total fairy tale.

I think he’s going to have a hard time explaining to his own population why hundreds, if not thousands of Russian soldiers are killed.

TB: Do you think Russia is deterrable at this point still? Or do you think that they’re signaling that they’re going in, no matter what?

Hodges: They are deterrable if Putin looks over and sees Biden, German Chancellor Olaf Sholtz, French President Emmanuel Macron, British Prime Minister Boris Johnson, and Italian Prime Minister Mario Draghi—all the EU members, all the NATO members, Canada, the UK, all shoulder to shoulder, in unison on economic sanctions. If they all tell Putin, “You’re going to pay a price like you’ve never paid before. And all your friends around you that are keeping you in power, they’re not going to be able to send their kids to school in London anymore. Assets are going to be frozen, no matter whose name they’re in.” If they do that and they can do it in a compelling way, then I think there’s a chance.

But if Putin looks over and he sees just the United States, I think the risk goes up.

TB: Do you think sanctions are an effective tool here? Or do you think that Putin has figured at this point that Russia can ride it out?

Hodges: If it’s only us, absolutely they’ll ride it out. But if they see that Germany and other allies are united with us—that’s a different story.

If we were thinking strategically, of course, and maybe some people have, we would have already signaled to our European allies not to worry. We will provide any gas that you need. If the Russian turn it off or start disrupting anything more, we’ll make sure you’ll get it from the Middle East or LNG. Maybe some people have already signaled this. This is the United States. We can do big things if we’ve thought about it and are willing to pay for it.

What makes us even more dangerous in my view is that the Chinese are watching this, too. If the Chinese Communist Party leadership see that the Americans cannot even get the Europeans together to prevent Putin from expanding his hold on Ukraine because of gas, then I don’t think there’ll be too impressed with our warnings about Taiwan.

TB: In 2014, at the beginning of the war, there was a split in opinion about selling certain arms to Ukraine, and ever since the United States has gone back and forth on whether to provide lethal aid or not. Do you think at this point we should still have those reservations? Where would you draw a line as to we should give the Ukrainians, should they ask for it?

Hodges: Let me first say: All of those decisions are not strategy decision. Those are policy decisions. And what’s been missing is a strategy for the region. Once we have a clear goal, a clear desired end-state, then you have endless debates about Javelin anti-tank missiles or counter-fire radar. So that’s, that’s my position is that we need a strategy that encompasses diplomatic and economic efforts, as well as security cooperation.

Having said all that, of course, whatever we give them, it needs to be something that you could put in a soldier’s hands immediately and use immediately. A Stinger anti-aircraft missile or a Javelin anti-tank missile—those kinds of capabilities Ukrainian troops already know how to use.

This is part of the mixed signals I’m talking about: There was a shipment counter-fire radar and other aid that was headed to Ukraine and it was stopped by the White House. Now they already some counter-fire radar from four years ago, and that was very effective for them. They lost one to the Russians, but they’ve managed to keep the rest of them alive. The White House stopped the shipment—for what reason?

On the other hand you have Patriot missiles. That would be a waste in the near term because it takes a lot of training. There’s a lot of overhead. It would be a big target.

I would strongly advocate for training. For example, do a joint, multinational, integrated air missile defense exercise. Practice now, because once a new offensive starts, there’s going to be dozens of missiles coming down, fixed-wing aircraft and drones going after every sensor, all at the same time, in a heavily contested cyber environment. So how do you make sure you’re shooting down the right thing? You’ve got to practice. And I think that we should be doing that with them right now. Bring them to Ramstein Air Force Base in Germany, for example, and, and train, practice, work on this.

Same thing with mobility. Have they practiced loading up tank battalions rapidly, at night, moving stuff around to be able to, react to a potential attack or opportunity?

We should be helping with intelligence. The Ukrainians can see what’s in front of them very well. We can let them see deep through signals, intelligence, imagery. I think we should be wide open on this.

TB: You talked about having a consistent policy, about what end state we want. Besides obviously what’s at stake for the Ukrainians, what is at stake here for the Russians? And what’s at stake here for America and our NATO allies, our European allies?

Hodges: Our leaders should be able to explain and every member of Congress should understand, and people around Europe, should understand why does Ukraine matters to us, why the Black Sea matters for us.

It matters because of course we have three NATO allies there: Turkey, Romania, and Bulgaria. And we have partners and friends that are there that we want to help protect. There’s respect for international law, for sovereignty, for all the values that we claim to be for. If we roll over for the Russians, then we have suffered a major defeat.

And there’s an economic interest. The Black Sea region is the ideal economic corridor between Europe and Eurasia. All the other corridors go through Russia or Iran. A free and open Black Sea benefits all of Europe, which is why the Russians don’t want that. They don’t want parliaments asking, “Why are there Russian troops in Georgia or Azerbaijan and Armenia?”

Finally, there’s Turkey. Now they’re very, very difficult, challenging ally. But you know, regimes change; geography does not change. Turkey is a bulwark for all of us against Iran and Islamic extremism, as well as a necessary ally for deterring Russian aggression in the region.

Why does Ukraine matter to Russia? Of course, there’s the reason Catherine the Great annexed it the first time back in the late 18th century, and that was for access to a year-round warm-water port. Most of Russia’s grain export goes out through the Black Sea, for example. Now, they have their own ports on the Black Sea, and before 2014, they had an agreement with the Ukrainian government, but they’ve chosen a different path.

TB: What do you think are the odds that after a new offensive in Ukraine, the war will stay localized? If you’re talking about massive cyberattacks, if you’re talking about use of drones and missiles, what are the odds that it spreads and becomes a more general war, with more than just the Ukrainians and Russians?

Hodges: Cyber doesn’t know boundaries. Refugees don’t know boundaries. There’s a lot of things that will be happening at sea, in Belarus, in Moldova, and perhaps even spill over into Romania or Poland or Hungary.

### 1NC---DA

GRIDLOCK

#### Bedoya’s confirmation is likely, BUT opposition to the antitrust agenda threatens to indefinitely deadlock meatpacking enforcement – and everything else

Moran 1-6-22 (Max Moran, Research Director of the Personnel Team at the Revolving Door Project, studied International Relations and Journalism at Brandeis University, “Merrick Garland Is Undermining the Biden Antitrust Strategy,” The American Prospect, 1-6-2022, https://prospect.org/justice/merrick-garland-is-undermining-biden-antitrust-strategy/)

The Biden administration is threatening new anti-monopoly enforcement actions against the Big Four meatpacking companies, in part to counter inflation at the grocery store and in part to address decades of exploitation of small farmers. On Monday, the president dispatched Agriculture Secretary Tom Vilsack and Attorney General Merrick Garland to hear grievances from small ranchers, while the White House builds a new web portal to gather complaints. While the White House’s proposals for funding small meat processors to increase competition are rather unsatisfying, the enforcement piece could have a real impact.

This initiative has caused the usual grumbling from neoliberal economists, and the usual corrections to the usual grumbling. But no one has yet explained how Biden plans to actually follow through on his threat—a problem for which Garland is partly to blame.

As The Information’s Josh Sisco reported on Tuesday, there are currently just two deputies trying to manage the entire DOJ Antitrust Division (ATR) alongside Assistant Attorney General Jonathan Kanter, who was confirmed only two months ago. ATR typically has at least 12 deputies and top advisers in the “front office” who oversee about 700 career staffers. And that was under past administrations, which didn’t have nearly as ambitious an antitrust agenda as Biden’s. Reversing four decades of Borkian antitrust sloth requires a cohesive and energetic senior leadership team.

Meanwhile, the Federal Trade Commission, the executive branch’s other main antitrust enforcer, remains in a 2-2 partisan deadlock, as Senate Republicans blockade Biden nominee Alvaro Bedoya from being confirmed as a commissioner. He has a path to 51 Senate votes, but arcane (and unnecessary) procedural hurdles have slowed the process to a crawl, hindering the other avenue to antitrust action.

Biden can only do so much to move Bedoya’s nomination. But in theory, nothing prevents him from hiring whomever Kanter personally trusts to help execute their shared agenda. The deputies at ATR are not Senate-confirmed positions. So what’s causing the chaos?

The problem isn’t procedural; it’s political. In addition to diversity concerns, Sisco reports that “ideological divisions” about anti-monopoly enforcement within the Biden administration are causing fights over any potential selection for the ATR deputies.

These divisions should be familiar to anyone who followed the initial fight over antitrust nominees during the Biden transition last year. While Biden himself seems sold on the benefits of a strong anti-monopoly agenda, Garland testified last year that he sees no problem with hiring big corporations’ preferred defense attorneys to oversee their former firms and clients. Garland and other anonymous voices floated a slew of names to run ATR throughout last year—anyone but Kanter, whom progressives favored.

While Garland lost that initial fight, he seems content to starve Kanter of resources as a work-around, even if it means sabotaging his own president’s agenda. Garland, after all, appears to consider it core to his job to throttle the better parts of the Biden administration for the sake of an imagined apolitical comity. He rushed to the Trump administration’s defense over the objections of the White House many times over the last year, and continues to undermine environmental action wherever he can. It’s perfectly in keeping with his priorities to undermine antitrust enforcement too.

The corporate revolvers and pro-monopoly hacks Garland boosted also haven’t gone anywhere. Again according to Sisco, Sonia Pfaffenroth is now in the mix for one of those coveted jobs in the ATR “front office.” Pfaffenroth revolved from Arnold & Porter into the Obama ATR and back over the last two decades. In private practice, she’s defended pharmaceutical firms, fossil fuel companies, and mining companies from class actions, price-fixing cases, and of course antitrust lawsuits.

One should look to Pfaffenroth’s record from her past stint at ATR to get a sense of what a second go-around might look like. Under the Obama administration, Pfaffenroth blessed tie-ups between Virgin America and Alaska Airlines, as well as US Airways and American Airlines. Today, just four mega-airlines control 80 percent of U.S. air traffic.

Pfaffenroth even approved the $107 billion merger between Anheuser-Busch InBev and SABMiller, allowing 30 percent of the world’s beer market volume and 60 percent of the world’s beer market profits at the time to be controlled by one firm. Today, AB InBev has essentially hacked the multitiered regulatory system that kept the alcohol market competitive for decades. In some cases, AB InBev’s distributors only allow craft brewers to distribute their drinks to retailers if they keep overall production low. This bottlenecking, alongside the pandemic, has been devastating for craft brewers.

Pfaffenroth’s record at ATR reveals someone whose poor judgment has harmed major American industries. But her judgment is reflective of the failed antitrust status quo, and in antitrust and everything else, Garland sees maintaining the status quo as inherently salutary. Where you or I might see bad calls, Garland likely sees jurisprudence executed according to a well-worn book. Whether the book is right or wrong is immaterial, in his eyes.

To state the obvious, Biden ought to reject Pfaffenroth and empower Kanter with deputies ready to throw that book aside, or else his antitrust agenda on meatpacking and everything else will get tossed on the growing pile of broken promises that are cratering his approval ratings. Doing so, however, will require standing up to Garland.

Thus far, Biden has appeared reluctant to do so, for fear of threatening the attorney general’s independence. There’s a kernel of truth here, after the Justice Department was turned into the president’s personal law firm under Trump. But there is a big difference between deploying the DOJ’s resources to help friends and target enemies and ensuring the DOJ has the staff and leadership necessary to execute its policy agenda. One is a blatant abuse of power, the other a clear presidential prerogative.

It’s an awkward situation for a president, but Biden must recognize that achieving his goals—especially the ones that improve working people’s economic fortunes—does far more for the health of the nation than sticking to a failed principle for its own sake. The president badly needs to remember that the buck stops not at Main Justice, but the Oval Office. Biden can demonstrate his commitment to fulfilling his promises and vision by empowering those of his appointees who are showing the necessary courage.

#### It’s NOT about Bedoya – it’s a referendum on the scope of the current agenda – deadlock is the point

Murphy 21 (Kathleen Murphy, Senior Reporter at FTC Watch, former Section Research Manager, Specialist at Congressional Research Service, former Managing Editor at CQ Roll Call and Bill Analysis Editor at Congressional Quarterly, “Bedoya’s confirmation hearing draws closer,” FTC Watch, Issue 1016, 11-1-2021, <https://www.mlexwatch.com/articles/13940/print?section=ftcwatch>)

When Alvaro Bedoya, President Joe Biden’s nominee to the Federal Trade Commission, faces US senators, he will be asked about his scholarly views on privacy. But the hearing also gives senators a chance to assess the agenda of the last FTC nominee they confirmed, Chair Lina Khan.

The Senate Commerce, Science and Transportation Committee is set to consider Bedoya’s nomination, although no hearing date has been set. It’s most likely to occur the week of Nov. 15 or early December, based on the 2021 Senate calendar.

Serving on the FTC means Bedoya, a Georgetown University professor and former congressional lawyer, would end a 2-2 split and give Democrats a majority to implement the chair’s policies. Bedoya, founding director of the Center on Privacy & Technology at Georgetown Law, would replace former Commissioner Rohit Chopra who left Oct. 8 to serve as director of the Consumer Financial Protection Bureau.

Biden nominated Bedoya in mid-September. Khan, meanwhile, started serving as FTC chair in mid-June after an 83-day confirmation process. (See FTCWatch, No. 1002, March 29, 2021.)

‘99% about FTC Chair Lina Khan’

Michael Keeley, co-chair of the antitrust practice at Axinn, Veltrop & Harkrider, tweeted: “Bedoya confirmation is going to be 99% about FTC Chair Lina Khan, and 1% to do with Alvaro Bedoya. (And hopefully 0% about the Vertical Merger Guidelines.)”

Keeley said he expects the focus of the hearing to be assessing the wisdom of the policies being pursued by Khan.

#### Plan expands opposition, derailing confirmation

Kovacic 20 (William E. Kovacic, former FTC Chair, Global Competition Professor of Law and Policy, George Washington University Law School, JD Columbia University, “Keeping Score: Improving the Positive Foundations for Antitrust Policy,” U. of Pennsylvania Journal of Business Law, 23(1), 2020, https://scholarship.law.upenn.edu/jbl/vol23/iss1/3/)

THE POLITICAL ASSAULT ON THE FTC

From the late 1960s through the 1970s, the FTC pursued an extraordinarily ambitious agenda of competition and consumer protection matters.107 Significant antitrust litigation included challenges to dominant firm misconduct and collective dominance, distribution practices, horizontal restraints, and facilitating practices. 108 Many matters involved powerful economic interests,109 and in a number of cases the Commission sought structural relief in the form of divestitures or the compulsory licensing of intellectual property. 110 In 1974, the agency also initiated a program that required certain large firms to provide “line-of-business” data concerning a range of performance indicators.111

In the same period, the Commission used a mix of litigation and rulemaking to transform its consumer protection agenda.112 Through policy guidance and litigation, the agency introduced its advertising substantiation program that required firms to have support for factual claims made in their advertisements.113 The Commission initiated over twenty-five rulemaking proceedings and promulgated final rules involving a broad collection of product and service sectors.114

As a group, the FTC’s competition and consumer protection initiatives aroused fierce opposition from the affected firms and industries, which contested the agency’s actions in court and before Congress. 115 The complaints of industry resonated with a large, powerful bipartisan coalition of legislators116 who criticized the Commission’s activism, proposed various measures to curb the agency’s authority, 117 and ultimately adopted a number of restrictions in The Federal Trade Commission Improvements Act of 1980 (FTC Improvements Act). 118 In 1980, bitter opposition to elements of the FTC’s competition and consumer protection programs led Congress to allow the FTC’s funding to lapse, forcing the agency to temporarily cease operations. 119 Perhaps emboldened by the weak political support the Commission enjoyed before 1981, when the Democrats controlled the White House and both chambers of Congress, the Reagan administration briefly resumed the assault on the agency’s funding. In January 1981, David Stockman, Ronald Reagan’s first Director of the Office of Management and Budget (OMB), launched a short-lived effort to eliminate funding for the FTC’s competition policy program.120

The congressional and executive branch officials who criticized the FTC in this period advanced two positive claims to justify recommendations for withdrawing authority or funding for the Commission. One claim was that the agency’s choice of competition and consumer protection programs had contradicted congressional guidance about how the FTC should use its authority and resources.121 Many legislators complained that the agency had disregarded the legislature’s preferences and used its powers in ways that Congress never contemplated to fall within the FTC’s remit.122 As Congress considered bills in 1979 to limit the Commission’s powers, Congressman William Frenzel captured the prevailing legislative mood:

It is bad enough to be counterproductive and therefore highly inflationary, but the FTC compounds its sins by generally ignoring the intent of our laws, and writing its own laws whenever the whimsey strikes it . . .

Ignoring Congress can be a virtue, but the FTC’s excessive nose-thumbing at the legislative branch has become legend. In short, the FTC has made itself into virulent political and economic pestilence, insulated from the people and their representatives, and accountable to no influence except its own caprice.123

The Commission, Frenzel concluded, was “a rogue agency gone insane.”124

The accusation of Commission disobedience figured prominently in Senate deliberations on the 1980 FTC Improvements Act. In less-flamboyant but still pointed terms, the chief Senate sponsors of the FTC Improvements Act said restrictions were necessary to curb the agency’s unauthorized adventurism. Senator Howard Cannon explained: “The real reason that we have proposed this legislation for the FTC is because the Commission appeared to be fully prepared to push its statutory authority to the very brink and beyond. Good judgment and wisdom had been replaced with an arrogance that seemed unparalleled among independent regulatory agencies.”125

The accusation of disregard for congressional will soon echoed in statements by high level officials in the newly arrived Reagan administration. OMB Director Stockman recited a variant of this theme in an appearance before a House of Representatives Committee early in 1981 to address his proposal to eliminate funding for the agency’s competition mission. Stockman said, “ . . . in recent years the FTC has served the public interest very poorly, in major part because it has sought to expand its power and influence beyond that envisioned by Congress.”126

Beyond generalized claims of institutional disobedience, the accusation of disregard for congressional will was invoked to justify proposals to impose restrictions on specific FTC initiatives. For example, in the fall of 1979, the Senate Commerce Committee held hearings on a proposal by Senator Howell Heflin to eliminate the FTC’s power to order divestiture or other forms ofstructural relief in non-merger cases.127 This was a shot across the bow of the FTC’s pending “shared monopoly”128 cases involving the breakfast cereal and petroleum refining sectors, where the FTC had requested structural relief (divestitures and, in the cereal case, compulsory trademark licensing) to restore competition.129 Congress did not adopt the Helfin proposal, but the idea of eliminating or restricting the FTC’s power to seek divestiture remained a serious threat to the agency. Roughly a year after the Commerce Committee hearings on the Heflin amendment, on the day before the balloting in the 1980 presidential elections, Vice-President Walter Mondale appeared at a campaign rally in Battle Creek, Michigan (the headquarters of the Kellogg Company). The Vice-President assured his audience that, if he and President Jimmy Carter were reelected, the Carter administration would seek legislation to ban the FTC from obtaining divestiture in the breakfast cereal shared monopolization case.130

A second, related claim was that the FTC had abandoned any adherence to sound administrative practice and descended into utterly irrational decision making. The agency was not merely disobedient (“rogue”) but crazy (“insane”), as well.131 Here, again, Congressman Frenzel pungently made the point. The FTC, Frenzel said, “is a king-sized cancer on our economy. It has undoubtedly added more unnecessary costs on American consumers who it is charged with protecting, than any other half dozen agencies combined.” 132 David Stockman’s initial broadside against the Commission in February 1981 echoed this sentiment. In a newspaper interview, Stockman said the FTC “is a passel of ideologues who are hostile to the business system, to the free enterprise system, and who sit down there and invent theories that justify more meddling and interference in the economy.”133

The accusation of disobedience and the diagnosis of insanity fit poorly, or at least awkwardly, with the positive record of the FTC’s activities in the 1970s. As discussed immediately below, the rogue agency story clashes with the many instances, especially between 1969 and 1976, in which congressional committees and key legislators directed the agency to carry out an aggressive, innovative enforcement program against major commercial interests. In 1969, numerous legislators endorsed the view of two external studies that the FTC had used its authority timidly and ineffectively.134 Leading members of Congress demanded that the agency transform its competition and consumer programs or face extinction.135

Congress described the content of the desired transformation in several ways. At a high level, oversight committees and individual legislators called for a dramatic boost in the agency’s appetite to undertake ambitious, risky projects—to replace a cautious, risk-avoiding decision calculus with a bold philosophy that erred in favor of intervention and used the agency’s elastic powers innovatively. Congress’s admonition to be aggressive and use power expansively emerged again and again in confirmation proceedings and routine oversight hearings.136 During hearings in 1970 to confirm Caspar Weinberger to be the Commission’s new chair, Senator Warren Magnuson, Chairman of the Senate Commerce Committee, told the nominee to “maintain the right kind of morale by recruiting strongly and expanding . . . Trade Commission programs in order to perform the job well.”137 In setting out this charge, Magnuson seemed to recognize that the FTC would have to be steadfast in resisting backlash—including from Congress—that would emerge as the FTC went about “expanding” its programs. The Commerce Committee Chairman said Congress was calling on the FTC to perform “tasks that require a great deal of attention and a great deal of fortitude not to respond to any pressures that come from any place.”138

Weinberger’s successor, Miles W. Kirkpatrick, received similar, and even more explicit congressional guidance, to apply the Commission’s powers broadly and aggressively. In 1969, Kirkpatrick had chaired a blueribbon American Bar Association panel whose report recommended the FTC implement an ambitious antitrust agenda that involved significant doctrinal, operational, and political risks.139 In his appearances as FTC chair before congressional committees, Kirkpatrick often heard legislators applaud the risk-preferring approach of the ABA study. In Kirkpatrick’s first appearance before the Commission’s Senate Appropriations subcommittee in 1971, the Subcommittee Chairman, Senator Gale McGee, provided the following guidance:

I think this is one of the Federal commissions that has a much larger responsibility and capability than sometimes it has been willing to live up to for reasons of congressional sniping at it in some respects or pressures put on it through the industry and the like.

Too often it has been either shy or bashful. . . . That is why we were having a rather closer look at your requests just in the hopes of encouraging you, if anything, to make mistakes, but I think the mistakes you are to make ought to be mistakes in doing and trying rather than playing safe in not doing. I believe that is the most serious mistake of all . . . you are not faulted for making mistakes. You may be for making it twice in a row, for not learning properly but, we would rather you make a mistake innovating, trying something new, rather than playing so cautiously that you never make a mistake. . . . 140

In his appearance before the same subcommittee a year later, Senator McGee observed with approval that Kirkpatrick had “responded to the criticism . . . by both Mr. [Ralph] Nader and the American Bar Association by moving aggressively against some of the major industries in the United States.” 141 Recognizing that the approach he described could elicit opposition from affected business interests, McGee promised that he and his colleagues would exercise best efforts to watch the agency’s back: “[I]f you step on toes you are going to catch flak for it, but I hope we will be able to push this even more aggressively by backing you more completely with the kind of help that I think you require.”142 McGee closed the proceedings with militant instructions:

“Stay with it and flex your muscles, clinch your fists, sharpen your claws, and go to it. We think this is desperately important in the interest of the Congress, whose creature you are, and the consumer whose faith and substantive capabilities in surviving hang very heavily upon what you succeed in doing.”143

Kirkpatrick served as the FTC’s chair for just over twenty-nine months. The Commission’s new chair, Lewis Engman, received the same policy guidance that Congress had provided Weinberger and Kirkpatrick. At Engman’s confirmation hearing before the Senate Commerce Committee early in 1973, Senator Frank Moss observed:

Under . . . Weinberger and Kirkpatrick, the Commission has taken on new life beginning with the search for strong and imaginative, rigorous developers and enforcers of the law and reaching out with innovative programs to restore competition and to make consumer sovereignty more than chamber of commerce rhetoric. 144

With evident approval, Moss recounted how the FTC had “stretched its powers to provide a credible countervailing public force to the enormous economic and political power of huge corporate conglomerates which today dominate American enterprise.” 145 The members of the Senate Commerce Committee, Moss concluded, “consider it one of our solemn duties to protect the Commission from economic and political forces which would deflect it from its regulatory zeal.” 146 Member after member of the Commerce Committee echoed Moss’s message to Engman. Senator Ted Stevens, an Alaska Republican, told the nominee, “I am really hopeful that . . . you will become a real zealot in terms of consumer affairs and some of these big business people will complain to us that you are going too far. That would be the day, as far as I am concerned.”147

The FTC got the message. The words and actions of Weinberger, Kirkpatrick, Engman, and other FTC leaders in this period reflected a preference for boldness, aggressiveness, innovation, and zeal. In a letter to Senator Edward Kennedy in July 1970, Weinberger reported that the FTC was trying “to make the most of that other resource given to us by Congress – our statutory powers.” 148 Weinberger said the Commission had “encouraged the staff to make recommendations to us which will probe the frontiers of our statutes,” had made progress in “[p]robling the outer limits” and “exploring the frontiers” of the agency’s authority, and had shown it “is receptive to novel and imaginative provisions in orders seeking to remedy unlawful practices.”149 In a speech to a professional association in 1971, Kirkpatrick reported that the Commission was “moving into ‘high gear’ in the task of preserving and promoting competition in the American economy.”150 He said he and his fellow board members “fully intend to be in the vanguard of exploration of the new frontiers of antitrust law.”151

By mid-1974, the FTC had launched several significant cases involving monopolization and collective dominance, including pathbreaking shared monopolization cases against the breakfast cereal152 and petroleum refining industries.153 With these matters underway, Engman in 1974 appeared at a congressional hearing of the Joint Economic Committee and received criticism that the FTC had been insufficiently active in challenging monopolies.154 The Joint Committee’s chairman, Senator William Proxmire, told Engman “the FTC, like a number of other regulatory agencies seems to concern itself with minor infractions of the law, and to spend much of its time on cases of small consequence.”155 Perhaps astonished to hear that cases to break up the nation’s leading breakfast cereal manufacturers and petroleum refiners involved minor infractions or matters of small consequence, Engman replied, “The Federal Trade Commission today is very aggressive. . . . We have seen a total turnaround in terms of the types of matters which are being addressed by the Bureau of Competition.”156

Beyond general policy exhortations to exercise power boldly and to err on the side of intervention, of doing too much rather than too little, Congress in the early to mid-1970s instructed the Commission to focus attention on specific commercial sectors and competitive problems within them. In the face of severe fuel shortages and price spikes for petroleum products in the early 1970s, numerous legislators demanded that the FTC conduct investigations and challenge the conduct of large, integrated petroleum companies. 157 Many insisted that the FTC use its competition mandate to force integrated refiners to deal on equitable terms with independent refiners and distributors.158 The Commission’s decision to file the Exxon shared monopoly case, which sought extensive horizontal and vertical divestiture remedies, can be explained as a response to these demands.159 In the same period, Congress applied strong pressure upon the FTC to examine and correct what it believed to be serious structural obstacles to effective competition in the food manufacturing industry.160 Here, also, the agency’s decision to prosecute the shared monopolization case against the country’s leading producers of ready-to-eat breakfast cereals can be seen as a response to this concern and faithful to the congressional prescription that the FTC use novel, innovative approaches to cure competitive problems.161 In these and other matters, the Commission explored the frontiers of its powers in the development of new cases.162

When one aligns the guidance of Congress in the early to mid-1970s about the appropriate content of FTC policy making with the FTC’s activity in the decade, it is apparent that the critique of the agency as disobedient to legislative will is a fiction, or at least badly misleading. A more accurate positive depiction of events in the 1970s is that the Commission faithfully followed legislative instructions given from 1970 up through the mid-1970s about the appropriate philosophy and means of enforcement, and that, as the decade came to a close, Congress changed its mind about what the FTC should do and how it should do it. As described below in Section IV.D., 163 that change in legislative temperament and the response by Congress to industry backlash against the FTC’s program have important implications for how the FTC plans programs and selects projects in the future. Accurate positive analysis reveals that the agency was not disobedient to Congress but was inattentive to the operation of a political feedback loop that exposes Congress to industry pressure once the FTC implements programs that involve significant economic stakes and endanger powerful commercial interests.164

Nor does a careful study of the positive record of the 1970s show that the FTC policy making was “insane.” Measured by its contributions to institution-building, the Commission did many things that epitomize good public administration. It carried out important organizational and personnel reforms that upgraded its operations and personnel.165 As explained more fully below, the agency also improved its mechanisms for setting priorities and selecting projects to achieve them and strengthened investments in policy research and development (including a program to evaluate the effects of completed cases).166 The FTC successfully carried out new regulatory duties entrusted by Congress in the 1970s; most notable was the implementation of the premerger notification mechanism that Congress created in the Hart-Scott-Rodino Antitrust Improvements Act of 1976.167 In all of these areas, the Commission of the 1970s made enduring enhancements to the institution and set important foundations for successful programs that followed in the next forty years. An insane agency could not have done so.

Another focal point for attention in assessing the FTC’s performance in the 1970s was the quality of its substantive agenda. Was the FTC’s substantive program in the 1970s “insane”? Many Commission competition and consumer protection initiatives in the 1970s encountered grave problems. FTC efforts to execute the bold, innovative, risk-preferring program that Congress had called for earlier in the decade generated a number of serious project failures.168 Insanity, on the part of individual leaders or the institution as a whole, does not explain the failures. These outcomes have more prosaic causes whose understanding is important to the future formulation of competition policy. Chief among the FTC’sflaws were a lack of historical awareness about the political hazards associated with undertaking an agenda of bold, innovative cases against powerful commercial interests; inadequate appreciation for the demands of bringing large numbers of difficult cases and promulgating ambitious trade regulation rules would impose on the agency’s improving but uneven human capital; and underestimation of the change in the center of gravity of economic learning that supports the operation of the U.S. antitrust system. As described below, many of these failings are rooted in weaknesses in the FTC’s knowledge in the 1970s of the positive record of its past enforcement experience.169

B. The Inadequate and Misdirected Enforcement Activity Narrative

Like the hyperactivity narrative described above, the inadequate activity narrative relies heavily on enforcement data to support the view that the federal antitrust agencies have brought too few cases overall and, when filing cases, have focused resources on the wrong types of matters.

Implicit or explicit assumptions about the level of enforcement activity have provided a central foundation in the modern era for broad normative claims of poor system performance. One collection of inadequacy critiques attacks federal enforcement program of the Reagan administration – a period characterized by what one journalist described as an “almost total abandonment of antitrust policy.” 170 In 1987, in discussing Reagan-era federal antitrust enforcement, Professor Robert Pitofsky said the DOJ and the FTC had produced “the most lenient antitrust enforcement program in fifty years.” 171 Professor Milton Handler remarked that in the Reagan era “a policy of nonenforcement has set in, much to the distress of those who believe that without antitrust the free market cannot remain free.” 172 Professors Lawrence Sullivan and Wolfgang Fikentscher observed, in addressing the treatment of civil nonmerger matters, “enforcement ceased.”173

A second body of commentary assails the work of the federal agencies in the George W. Bush administration. For example, in 2008, during his campaign to gain the Democratic Party’s nomination for the presidency, Barack Obama said the George W. Bush administration “has what may be the weakest record of antitrust enforcement of any administration in the last half-century.” 174 The Obama statement did not compare activity levels across all administrations over the 50-year-long comparison period, but the statement suggested that the general claim was based on variations in activity over time.

A third version of the inadequacy narrative marks the beginning of the decline of effective enforcement at the outset of the George W. Bush administration and extending through the present.175

A fourth variant writes off the entire period from roughly 1980 onward as an antitrust catastrophe.176 After noting that for most of the 20th century “antitrust enforcement waxed or waned depending on the administration in office,” Professor Robert Reich recently wrote that “after 1980 it all but disappeared.”177 He added that Presidents Bill Clinton and Barack Obama “allowed antitrust enforcement to ossify, enabling large corporations to grow far larger and major industries to become more concentrated.” 178

Presented below are categories of arguments that rely upon specific assertions about the positive record of modern antitrust enforcement. These arguments make positive claims regarding either the amount of activity, the reasons for observed behavior, or both.

GENERAL CRITICISMS OF ANTITRUST ENFORCEMENT: BORK, REAGAN, AND THE DESTRUCTION OF U.S. COMPETITION POLICY

Many commentators have offered explanations for why federal antitrust enforcement became inadequate after the late 1970s. One major positive explanation is that the modern Chicago School of antitrust analysis, grounded largely in the writings of Robert Bork, inspired a severe retrenchment of enforcement at the DOJ and the FTC and led the federal courts to narrow antitrust doctrine since the late 1970s.179 A major focus of this discussion of the causes for changes in enforcement involves rules governing the treatment of dominant firms.180

A second cause offered to explain a redirection of enforcement is the ascent to the presidency of Ronald Reagan and his appointment of permissive leadership to the DOJ and the FTC.181 The Reagan administration is said to have inherited a generally well-functioning antitrust enforcement system and run it into the ground.

The Chicago School, Bork-centric, and Reagan-centric explanations for policy change can be misleading due to mischaracterizations of what took place and their tendency to omit other forces that had helped narrow the scope of antitrust enforcement. Bork and the Chicago School unmistakably have exerted a significant impact upon modern antitrust policy, but the retrenchment of antitrust enforcement in some areas cannot accurately be attributed to them entirely or, for a number of important developments, even principally. 182 Many proponents of the inadequacy narrative make little or no mention of the role of modern Harvard School scholars, such as Philip Areeda and Donald Turner, in leading courts and enforcement agencies to move the antitrust system toward a less interventionist stance.183

Areeda and Turner encouraged courts to forego reliance on noneconomic goals in deciding antitrust cases. 184 The two Harvard scholars also advocated the adoption of stricter procedural and doctrinal screens to counteract what they perceived to be flaws in the U.S. system of private rights of action.185 The inadequacy narrative often overlooks the influence of the modern Harvard School and thus misses how much the permissiveness of modern antitrust policy reflects the Harvard School’s concern that private rights of action over-deter legitimate business conduct by dominant firms.186 This yields a faulty positive diagnosis of the forces that have reduced the reach of the U.S. antitrust regime. As noted below, understanding how the institution-grounded limitations proposed by the modern Harvard School have imposed greater demands on plaintiffs has important implications for government plaintiffs seeking to devise a strategy to reclaim doctrinal ground lost since the 1970s.187

Similar imprecision and omission characterize the portrayal of the Reagan administration as the force that swung antitrust policy away from a sensible interventionist equilibrium and gave it a durably noninterventionist orientation. Some elements of the Reagan-centric narrative turn events 180 degrees around from their positive roots.188 More significant, the narrative does not address how badly the Congress and the White House had damaged the FTC’s stature and operations before Ronald Reagan took office in late January 1981. By the end of 1980, the Commission had been shoved into the equivalent of political bankruptcy by a Congress and a White House under the control of the Democratic Party.189

By treating the 1980 presidential election as the cause of an abrupt change in federal antitrust enforcement policy, the Reagan-centric inadequacy narrative fails to grasp the significance of the political assault, led by Democrats, against the FTC in the late 1970s. Recognition of how the FTC’s relationship with Congress changed over the course of the 1970s forces one to confront the question of why an agency that enjoyed powerful congressional support through much of the decade came to grief so quickly. The episode has a sobering cautionary lesson for contemporary policy making: it demonstrates how quickly congressional attitudes can change once powerful business interests affected by FTC actions bring their resources to bear upon Congress, and how turnover in the legislature can erode vital political support. An accurate positive account of the 1970s suggests that an agency should strive to complete its cases and rulemaking initiatives as expeditiously as possible, lest long lags between the start and conclusion of matters expose the agency to debilitating political backlash. This policy making prescription becomes apparent only by forming an accurate picture of what happened to the FTC in the 1970s.

#### Key to break the political power of Big Ag broadly – spills over to deconsolidate farming

Gustin 19 (Georgina Gustin, covers agriculture for Inside Climate News, won numerous awards, including the John B. Oakes Award for Distinguished Environmental Journalism and the Glenn Cunningham Agricultural Journalist of the Year, formerly reported for the St. Louis Post-Dispatch and CQ Roll Call, graduate of the Columbia University Graduate School of Journalism, “Industrial Agriculture, an Extraction Industry Like Fossil Fuels, a Growing Driver of Climate Change,” Inside Climate News, 1-25-2019, https://insideclimatenews.org/news/25012019/climate-change-agriculture-farming-consolidation-corn-soybeans-meat-crop-subsidies/)

Meat and Mergers

Critics say that lax enforcement of antitrust laws has enabled even more concentration in the hands of fewer companies.

That concentration has occurred not just at the farm level but throughout the food system, including in fertilizer and pesticide manufacturing, grain distribution, food processing and grocery retailing. Four companies or fewer control each of these sectors of the food industry.

Recent mega-mergers of agricultural chemical and seed companies—Monsanto and Bayer, ChinaChem and Syngenta, Dow Chemical and DuPont—have further concentrated seed technology in the hands of a few companies. Critics worry that could leave farmers with fewer choices over what to plant and how.

Nowhere has the consolidation been more pronounced than in the meat industry, a hugely profitable and influential force in American agriculture. Today, a handful of companies, led by Brazil-based JBS Holdings, dominate the global meat industry, wielding enormous economic and political might.

“It’s JBS and Smithfield,” said Joe Maxwell, a hog farmer from Missouri and executive director of the antitrust watchdog Organization for Competitive Markets. “They want the U.S. to be the cheapest place to raise meat. They drive the political power in D.C. The result is that farmers are locked into farming for government programs that are not sustainable, economically and environmentally.”

The consolidation in meat production is also what’s driving the consolidation of crop farming, Maxwell said.

Livestock is now commonly raised or fattened in confinement on a diet of soybeans and corn instead of grass or other forage.

“The decades-long removal of livestock from diversified farms and moving into industrial facilities has certainly increased corn and soybean acreage. Those two things go hand in hand,” Hoefner said. “I think it’s a very open question whether that kind of transition back to a more integrated crop and livestock system is even possible. We’ve made such major landscape changes.”

#### Key to regenerative farming

Tam 21—(writer at UCLA Undergraduate Law Journal, won the UCLA Prize for Undergraduate Research, supervised by William Boyd, Professor of Law at UCLA School of Law and Institute of the Environment and Sustainability). Kristen Tam & Olivia Bielskis. April 1, 2021. “Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement”. UCLA Library. <https://escholarship.org/uc/item/0m16g2r5#main>.

INTRODUCTION

The failures of the federal courts and agencies to adequately enact antitrust enforcement has resulted in extensive consolidation of the agricultural marketplace creating conditions in which few distributors, meatpacking firms, and farms hold disproportionate percentages of the market power. Such instances of consolidation in the market are intended to be regulated through federal policies such as the Clayton Antitrust Act. However, the influence of Robert Bork and the Chicago School, which both argue to prioritize efficiency through consolidation over small businesses and competition in the market, resulted in an era from the 1980s to the present where the federal courts and agencies have adopted a less precautionary philosophy in interpreting antitrust laws, allowing large firms to merge, and leaving the marketplace largely unregulated.

The first gatekeepers that regulate corporation consolidation are the Department of Justice’s (DOJ) Antitrust Division and the Federal Trade Commission (FTC), which are responsible for reviewing new and existing mergers. To supplement, the Courts evaluate cases that involve mergers that seek to persist despite the DOJ or FTC preventing the merge. The Courts can also hear cases in which other firms on the market claim they will be substantially threatened by a potential merger. Often, mergers are brought up to the Courts under the Clayton Act, which requires proof of antitrust injury to sue. Suffering “antitrust injury” can include acts that “may substantially lessen competition,” as stated in Section 7 of the Act.

The impacts of large mergers are especially staggering when examining the dominance of the agriculture industry’s distributors, largest meat packing firms, and largest farms, which can all be referred to as agriculture firms in this paper. In 2017, four beef packaging firms owned 83 percent of the market.1 With only four firms holding a substantial percentage of market power, smaller firms and farms were obligated to decrease their selling price in order to compete with larger firms maintaining high economies of scale. This hinders the profitability of small farms, ultimately resulting in market failure because these farms are eventually driven out by their untouchable competitors, allowing the largest agriculture firms to hold monopolistic power. In the 1980s, farmers profited 37 cents per dollar spent in production,2 while in 2018, farmers made less than 15 cents per dollar.3 Decreasing profit margins are being perpetuated by the few gargantuan distributors that control the marketplace, allowing them to pay farmers or ranchers the price they want to set, often below market rate.

Decreasing competition and profit margins threatens the existence of small farmers and poses a substantial threat to essential climate change mitigation by hindering the growth of regenerative farming. Large industrial agriculture firms mostly utilize destructive farming practices including applying toxic synthetic fertilizers, planting monoculture fields, and tilling their soil. Tilling, the practice of overturning soil for the purpose of reducing soil compaction4 and mixing nutrients, decreases water retention, destroys vital soil microbes, and results in the release of carbon dioxide, a harmful greenhouse gas contributing to climate change.5 Every year, 44.02 billion tons of chemical fertilizer are applied onto U.S. soil,6 while every minute thirty soccer fields worth of soil are lost due to tilling practices.7 This is threatening food security, ecosystems, and the climate.8 The Intergovernmental Panel on Climate Change (IPCC) prescribes that the world needs to limit global temperature rise to 1.5 degrees Celsius by 2050. Agriculture contributes to 10.5 percent of the United States’ emissions, therefore we have a significant capacity to instead decrease emissions by implementing more sustainable farming practices.9

Conversely, a majority of smaller farms avoid these harmful practices and work to combat climate change by implementing regenerative techniques such as practicing no till, applying compost as fertilizer, and planting cover crops. In addition to building soil health, increasing soil water retention, and sequestering carbon dioxide from the atmosphere, small farms are able to implement farming practices that fit the local environment and adapt quickly with flexibility to maintain production during changing environmental conditions.10 Although small farms are more likely and willing to implement regenerative practices, their ability to switch to regenerative practices is dampened because they have limited money, time, or resources to do so with low profit margins. Failure to regulate the market is hindering a transition that would benefit the industry and planet in the long run. Although there are no laws in place that limit soil degrading practices, antitrust laws were created to prevent monopolies and undue concentration of market power in the hands of a few corporations, such as the beef packing conglomerates, from forming on the marketplace. If implemented properly, these laws have the potential to protect competition in the agriculture industry, keep small farms alive, and decrease the amount of soil being destructively farmed.

The federal government’s lackluster antitrust enforcement is born from a history of jurisprudential doctrines that favor large corporations and efficiency and subsequently discourage federal agencies from striking down harmful mergers. This paper first discusses the impact of lackluster enforcement of antitrust laws on the agriculture industry, focusing specifically on the hindrance of regenerative farming practices. Antitrust laws were created to prevent and correct such consolidation, thus, I enlist a two-pronged approach that identifies the main avenues through which consolidation has increased, and recommend remedies. The first prong addresses how the merge permitted between two meat packing corporations in Cargill v. Monfort contradicts the purpose of the Clayton Act and has set substantial precedent for the court's non precautionary interpretation of antitrust laws and what constitutes as “antitrust harm” under the Clayton Act. I argue that the Courts should set a new judicial standard that allows the “threat of loss of profits due to possible price competition” to constitute “antitrust injury,” and that they must default to precautionary measures and strike down mergers that have the capacity to acquire an undue percentage of the market share. The second prong addresses how the negligence of the DOJ and FTC has yielded a significant increase in consolidation of agriculture firms in the United States. To do so, I argue that these agencies must increase the number of agriculture and meatpacking merger acquisitions they block by holistically analyzing the scope of the mergers market power. Additionally, the reinvestigation of current corporations in the market holding unruly market power is essential in remedying the adverse impacts of market consolidation in agriculture.

I. The Current Market: As Farms Consolidate, the Growth of Regenerative Farming is Hindered

A. Increased Consolidation in the Agriculture Industry as Deregulation Heightens on Farms, Meat Packing, and Other Food Corporations

As defined by the United States Department of Agriculture (USDA), a “farm” is any place from which $1,000 or more of agricultural products were produced or sold during the year.11 This section discusses the historical and current consolidation trends in the agriculture marketplace for farms, meatpacking firms, and many other food corporations. I find that the overall number of farms has decreased while the size of each farm or firm has increased, and the number of farms in higher sales classes have increased along with their subsequent share of farmland.12

Farm numbers have decreased since the onset of the 20th century, however, due to Robert Bork and the Chicago School’s influence that prioritized economic efficiency and consumer prices over small businesses,13 the number of farms in the United States started decreasing at faster rates. In 1975, there were 2.5 million farms across the country,14 which declined by an average of 2.41 percent per year.1516 Comparatively, from 1980 to 1985, the number of farms decreased by an average of 6.15 percent per year,17 alluding to increased rates of consolidation.

While farm numbers continue to decrease, output production size and the Gross Cash Farm Income (GCFI) of large farms has increased. From 2012 to 2018, the number of farms decreased from 2.11 to 2.03 million farms, while the average farm size increased from 429 to 443 acres.18 Specifically, the growth in land holdings has increased the greatest in the largest farms. In 1987, 57 percent of the United States cropland was operated by midsize farms with 100 to 999 acres of cropland while only 15 percent was operated by large farms over 2,000 acres.19 In 2012, cropland operated by midsize farms drastically decreased to 36 percent while cropland operated by large farms increased to 36 percent, more than doubling the figure from 1987.20 In addition to holding control of more land and market power, and decreasing competition in the marketplace, these larger farms hold a disproportionate majority of agricultural commodity profits. In 1991, small farms, defined as farms whose income is less than $350,000, took in 46 percent of agricultural profit, while in 2015, small farms took in only 25 percent of agricultural profit.21 Large farms, who make more than $1,000,000 held 31 percent of the GFCI in 1991, while in 2015, their share increased to 51 percent.22

The trend towards consolidation is also prevalent in the livestock, poultry and meat packing industries, seeing as the number of farms and packaging plants decrease while the number of animals raised per farm increases. From 1987 to 2017, there was a 28.50 percent decrease in the number of cow, pig and chicken farms.23 While the number of farms decreased, the midpoint numbers for the number of livestock per farm increased; where half of the livestock are above, and half are below it. In 1987, the midpoint number of cows for each livestock feeding industry was 80, while in 2012, this increased to 900, an increase of 1,025 percent.24 The number of meatpacking plants, where farmers sell their animals to be slaughtered, packaged, and distributed, also decreased which allows meatpackers to run roughshod over farmers by giving them power to pay their desired lower prices, disadvantaging farmers.

Consolidation in other food industries is increasing as well, seeing as in 2012 four firms owned 89 percent of the peanut butter industry, a staggering figure which increased to 92 percent in 2017.25 In 2015 the two largest corn seed firms owned 78 percent of the market share,26 in 2017 the four largest jelly firms owned 85 percent of the industry,27 and in 2018, two firms owned 87 percent of the mayonnaise market share, a $1.6 billion dollar industry.28 These figures showing monopolization exemplify the formidable proportions to which the agriculture and food industry is consolidated. These trends underscore how the regulation mechanisms in place to promote competition and prevent monopolization are not working.

B. Consolidation Threatens Democratic Systems

The consolidation and existence of merged corporations harms farmers and consumers and contradicts the democratic spirit of objective policy creation for the good of the people, not the corporation. Limited choices in the marketplace increases reliance on those select businesses, allowing them to have a significant influence on the government to make decisions in their favor. If any of those firms becomes economically endangered, the government is more inclined to to bail them out because they rely on their product or service. For instance, Tyson is one of America’s largest meat processing companies.29 Because they control a sizable majority of the market, when problems hindering production arise, including when multiple plants shut down during the onset of the coronavirus pandemic in 2020, a large decrease in the nation’s slaughtering capacity comes about, resulting in food shortages. Because of their essential position in the food supply, these meatpacking businesses can use their large market power to put pressure on the government to provide subsidies and bail them out of lawsuits and business failures. This dynamic harms farmers who have few or no other choices to sell their livestock to for slaughter in order to go to the market. These firms can extract these advantages even when problems such as COVID-19 outbreaks in the plants resulted from deliberate neglect to implement adequate safeguards by company heads.30 In addition to providing an unwavering safety net regardless of firm malpractice, the government often bends to the firm’s demands if they seek subsidies or exemptions from prosecution.31 In effect, when firms become so large that they cannot be allowed to fail, they begin to have disproportionate power over the political process.32

C. Consolidation Threatens the Growth of Regenerative Farming

I. Regenerative Farming is Reducing Emissions, Bolstering Biodiversity, and Increasing Food Security, a Critical Practice to create a Climate Resilient Future

The United Nations IPCC report calls for a rapid greenhouse gas reduction to limit temperature rise to 1.5 degrees celsius by 2050.33 Given that agriculture and forestry accounted for 10.5 percent of greenhouse gas emissions in 2018,34 farming practices can play a crucial role in meeting these goals. Farming the land in ways that build healthy soil, maintain biodiversity, and sequester carbon dioxide are critical measures that will help America cultivate a sustainable food system, protect the land for generations to come, and meet greenhouse gas emission reduction goals.

Currently, the practices that dominate the American agricultural landscape often till the soil, plant only one to two crops at a time, and input large sums of fertilizer, herbicides, pesticides, and other chemicals to streamline production. Industrialized agriculture values efficiency, maximizing yield, and decreasing labor input. In contrast, regenerative agriculture practices maintain soil health for long term benefit by applying compost as fertilizer, planting cover crops, implementing diverse crop rotation, rotating livestock grazing, limiting fertilizer and pesticide use, and eliminating tillage practices.35 Although opponents highlight that regenerative practices yield less products per acre and require more labor input, they neglect the significance of their energy input being 30-60 percent less than traditional methods because they do not use machines, fertilizer, and herbicides.36 This practice ultimately increases the long term productivity and stability of food production because it doesn’t rely on the continuous purchasing and application of chemicals into the soil. Instead, it builds soil health by increasing nutrient and water retention, both of which increases land productivity.37

II. Small Farms are More Likely to Implement Regenerative Fertilization Practices

One of the defining regenerative agriculture practices is applying compost and manure as fertilizer. There are three different types of fertilization methods that the USDA measures every few years, manure, organic, and commercial that help replenish soil nutrients. Manure is the application of animal bio excretions,38 organic fertilizer is the use of organic matter, compost, animal manures or green manures and does not include any chemical fertilizers,39 and commercial fertilizer is the application of chemically derived fertilizers such as nitrogen, phosphate and potash.40 For these figures, manure and organic fertilizers are categorized as “regenerative fertilizers” because they represent methods that replenish soils with naturally derived as opposed to chemically manufactured nutrients.

Small farms, 10.0 to 49.9 acres, are more likely to implement regenerative fertilizer methods than medium sized, 260 to 499 acres, and large sized, 1,000 to 1,999 acre farms. In 2017, 32.74 percent of small farms used regenerative fertilizer, compared to 27.27 percent of medium and 21.63 percent of large farms.41 Small farms are also transitioning away from commercial fertilizer to regenerative fertilizer methods at a faster rate than medium and large farms. From 2012 to 2017, small farms had the greatest percent decrease in number of farms using commercial fertilizers, 6.50 percent, and the largest percent increase for regenerative practices, 6.47 percent. Medium farms experienced a 2.28 percent decrease in the number of farms implementing commercial fertilizers, while a 2.57 percent increase in regenerative fertilizers. Large farms experienced a 2.31 percent decrease in the number of farming implementing commercial fertilizers, while a 2.32 percent increase in regenerative fertilizers.42 This demonstrates that smaller farms are more willing and better suited to implement regenerative practices.

Industrial agriculture firms, on the other hand, highly prioritize efficiencies and maximizing profit, thus, are less likely to invest the time and money into learning about and switching to regenerative fertilization practices. While small farms are making the most rapid transition to regenerative fertilization practices that would benefit the market and planet in the long run, the increased market and resource dominance of the largest farms, which have the slowest rates of transition to regenerative fertilization practices, is ultimately hindering the growth of regenerative agriculture in the United States.

#### Extinction

Friedemann 17 – Alice Friedemann, Unrelated to Nina, Systems Architect and Engineer For Over 25 Years, Science, Energy, and Agriculture Writer, Investigative Journalist and Energy Expert, Founder of Energy Skeptic, Author of When Trucks Stop Running: Energy and the Future of Transportation, “Chemical Industrial Agriculture is Unsustainable. Here’s Why”, Resilience, 5-27, http://www.resilience.org/stories/2017-03-27/chemical-industrial-farming-unsustainable-heres/

We hear a lot about how we’re running out of antibiotics. But we are also doomed to run out of pesticides, because insects inevitably develop resistance, whether toxic chemicals are sprayed directly or genetically engineered into the plants.

Worse yet, weeds, insects, and fungus develop resistance in just 5 years on average, which has caused the chemicals to grow increasingly lethal over the past 60 years. And it takes on average eight to ten years to identify, test, and develop a new pesticide, though that isn’t long enough to discover the long-term toxicity to humans and other organisms.

And this devil’s bargain hasn’t even provided most of the gains in crop yields, which is due to natural-gas and phosphate fertilizers plus soil-crushing tractors and harvesters that can do the work of millions of men and horses quickly on farms that grow only one crop on thousands of acres.

Yet before pesticides, farmers lost a third of their crops to pests, after pesticides, farmers still lose a third of their crops.

Even without pesticides, industrial agriculture is doomed to fail from extremely high rates of soil erosion and soil compaction at rates that far exceed losses in the past, since soil couldn’t wash or blow away as easily on small farms that grew many crops.

But pest killing chemicals are surely accelerating the day of reckoning sooner rather than later. Enormous amounts of toxic chemicals are dumped on land every year — over 1 billion pounds are used in the United State (US) every year and 5.6 billion pounds globally (Alavanja 2009).

This destroys the very ecosystems that used to help plants fight off pests, and is a major factor biodiversity loss and extinction.

Evidence also points to pesticides playing a key role in the loss of bees and their pollination services. Although paleo-diet fanatics won’t mind eating mostly meat when fruit, vegetable, and nut crops are gone, they will not be so happy about having to eat more carbohydrates. Wheat and other grains will still be around, since they are wind-pollinated.

Agricultural chemicals render land lifeless and toxic to beneficial creatures, also killing the food chain above — fish, amphibians, birds, and humans (from cancer, chronic disease, and suicide).

Surely a day is coming when pesticides stop working, resulting in massive famines. But who is there to speak for the grandchildren? And those that do speak for them are mowed down by the logic of libertarian capitalism, which only cares about profits today. Given that a political party is now in power in the U.S. that wants to get rid of the protections the Environmental Protection Agency (EPA) and other agencies provide, may make matters worse if agricultural chemicals are allowed to be more toxic, long-lasting, and released earlier, before being fully tested for health effects.

Meanwhile chemical and genetic engineering companies are making a fortune, because the farmers have to pay full price, since the pests develop resistance long before a product is old enough to be made generically. Except for glyphosate, but weeds have developed resistance. Predictably.

In fact, the inevitability of resistance has been known for nearly seven decades. In 1951, as the world began using synthetic chemicals, Dr. Reginald Painter at Kansas State University published “Insect Resistance in Crop Plants”. He made a case that it would be better to understand how a crop plant fought off insects, since it was inevitable that insects would develop genetic or behavioral resistance. At best, chemicals might be used as an emergency control measure.

Farmers will say that we simply must carry on like this, there’s no other choice. But that’s simply not true.

Consider the corn rootworm, that costs farmers about $2 billion a year in lost crops despite spending hundreds of millions on chemicals and the hundreds of millions of dollars chemical companies spend developing new chemicals.

To lower the chances of corn pests developing resistance, corn crops were rotated with soybeans. Predictably, a few mutated to eat soybeans plus changed their behavior. They used to only lay eggs on nearby corn plants, now they disperse to lay eggs on soybean crops as well. Worse yet, corn is more profitable than soy and many farmers began growing continuous corn. Already the corn rootworm is developing resistance to the latest and greatest chemicals.

But the corn rootworm is not causing devastation in Europe, because farms are smaller and most farmers rotate not just soy, but wheat, alfalfa, sorghum and oats with corn (Nordhaus 2017).

Before planting, farmers try to get rid of pests that survived the winter and apply fumigants to kill fungi and nematodes, and pre-emergent chemicals to reduce weed seeds from emerging. Even farmers practicing no-till farming douse the land with herbicides by using GMO herbicide-resistant crops. Then over the course of crop growth, farmers may apply several rounds of additional pesticides to control different pests. For example, cotton growers apply chemicals from 12 to 30 times before harvest.

Currently, the potential harm is only assessed for 2 to 3 years before a permit is issued, even though the damage might occur up to 20 years later.

Although these chemicals appear to be just like antibiotics, that isn’t entirely true. We develop some immunity to a disease after antibiotics help us recover, but a plant is still vulnerable to the pests and weeds with the genetics or behavior to survive and chemical assault.

Although there are thousands of chemical toxins, what matters is how they kill, their method of action (MOA). For herbicides there are only 29 MOAs, for insecticides, just 28. So if a pest develops resistance to one chemical within an MOA, it will be resistant to all of the thousands of chemicals within that MOA.

The demand for chemicals has also grown due the high level of bioinvasive species. It takes a while to find native pests and make sure they won’t do more harm than good. In the 1950s there were just three main corn pests. By 1978 there were 40, and they vary regionally. For example, California has 30 arthropods and over 14 fungal diseases to cope with.

When I was learning how to grow food organically back in the 90s, I remember how outraged organic farmers were that Monsanto was going to genetically engineer plants to have the Bt bacteria in them. This is because the only insecticide organic farmers can use is Bt bacteria, because it is found in the soil. It’s natural. Organic farmers have been careful to spray only in emergencies so that insects didn’t develop resistance to their only remedy. Since 1996, GMO plants have been engineered to have Bt in them, and predictably, insects have developed resistance. For example, in 2015, 81% of all corn was planted with genetically engineered Bt. But corn earworms have developed resistance, especially in North Carolina and Georgia, setting the stage for damage across the nation. Five other insects have developed resistance to Bt as well.

GMO plants were also going to reduce pesticide use. They did for a while, but not for long. Chemical use has increased 7% to 202,000 tons a year in the past 10 years.

Resistance can come in other ways than mutations. Behavior can change. Cockroach bait is laced with glucose, so cockroaches that developed glucose-aversion now no longer take the bait.

It is worth repeating that chemicals and other practices are ruining the long-term viability of agriculture. Here is how author Dyer explains it:

“Ultimately the practice of modern farming is not sustainable” because “the damage to the soil and natural ecosystems is so great that farming becomes dependent not on the land but on the artificial inputs into the process, such as fertilizers and pesticides. In many ways, our battle against the diverse array of pest species is a battle against the health of the system itself. As we kill pest species, we also kill related species that may be beneficial. We kill predators that could assist our efforts. We reduce the ecosystem’s ability to recover due to reduced diversity, and we interfere with the organisms that affect the biogeochemical processes that maintain the soils in which the plants grow.

Soil is a complex, multifaceted living thing that is far more than the sum of the sand, silt, clay, fungi, microbes, nematodes, and other invertebrates. All biotic components interact as an ecosystem within the soil and at the surface, and in relation to the larger components such as herbivores that move across the land. Organisms grow and dig through the soil, aerate it, reorganize it, and add and subtract organic material. Mature soil is structured and layered and, very importantly, it remains in place. Plowing of the soil turns everything upside down. What was hidden from light is exposed. What was kept at a constant temperature is now varying with the day and night and seasons. What cannot tolerate drying conditions at the surface is likely killed. And very sensitive and delicate structures within the soil are disrupted and destroyed.

Conventional tillage disrupts the entire soil ecosystem. Tractors and farm equipment are large and heavy; they compact the soil, which removes air space and water-holding capacity. Wind and water erosion remove the smallest soil particles, which typically hold most of the micronutrients needed by plants. Synthetic fertilizers are added to supplement the loss of oil nutrients but often are relatively toxic to many soil organisms. And chemicals such as pre-emergents, fumigants, herbicides, insecticides, acaricides, fungicides, and defoliants eventually kill all but the most tolerant or resistant soil organisms. It does not take long to reduce a native, living, dynamic soil to a relatively lifeless collection of inorganic particles with little of the natural structure and function of undisturbed soil”.

### 1NC---K

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

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

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

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

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

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

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

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

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

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

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

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

### 1NC---CP

#### The fifty state governments and relevant territories should takeover private electricity and gas corporations.

#### Solves all advantages!

Hanna 13 (Thomas Hanna – PhD candidate in political economy at the University of Glasgow, MA in History from Virginia Commonwealth University, Research Director at The Democracy Collaborative. <KEN> “Challenging Corporate Domination: The Public Ownership Approach,” *The Good Society*, Vol. 22, No. 1, pp. 26-43. <https://www.jstor.org/stable/10.5325/goodsociety.22.1.0026>)

Moreover, it is evident that even when corporations are broken up by antitrust actions, they often recombine afterward. For example, as the result of an antitrust settlement with the government, on January 1, 1984 AT&T spun off its local operations creating the seven so-called “baby bells.” These then quickly began to merge and regroup. By 2006, four of the baby bells were reunited with their parent company (AT&T) and two others, Bell Atlantic and NYNEX, merged to form Verizon. Currently, according to observers, we have “a telecom industry that is far more consolidated than any of the breakup's advocates had anticipated.”35 As with regulatory capture, some of the harshest critics of the effectiveness of antitrust law were highly conservative economists. Milton Friedman once wrote: “When I started in this business, as a believer in competition, I was a great supporter of antitrust laws…. But as I watched what actually happened, I saw that, instead of promoting competition, antitrust laws tended to do exactly the opposite, because they tended…to be taken over by the people they were supposed to regulate and control.”36

Lastly, the collapse of organized labor in the United States is obvious. From a modest—compared to many other countries—post-war peak of 34.7 percent of the labor force belonging to a union in 1954, the unionization rate has fallen dramatically to just 11.3 percent in 2012 (6.6 percent in the private sector).37 While many factors are behind this decline going back to the Taft-Hartley Act of 1947, a key one was the political mobilization of corporations starting in the 1970s. When unions were more powerful, they provided a counterweight to corporations that helped provide the political support necessary to maintain effective regulatory and antitrust measures, as well as pass social, environmental, and safety legislation. With their decline, the likelihood of significant progressive initiatives to alter decaying trends seems remote.

If certain large private corporations pose a significant threat to the economy, to democracy, and to the environment; and if traditional strategies of control no longer work, a different approach must be considered—specifically democratized public ownership. A perspective on this issue was offered by E. F. Schumacher, author of the influential book Small is Beautiful, who held that “[w]hen we come to large-scale enterprises, the idea of private ownership becomes an absurdity.”38 Of course, any such program will be immediately attacked as “socialism.” But, in a time of decay and stalemate, ultimately, as John Kenneth Galbraith once noted, “[t]he issue is purely a pragmatic one: Is it working now, or would it work better under public ownership?”39

One charge commonly leveled against public ownership is that it is “inherently” less efficient than private enterprise. In recent decades such a view has generally been accepted as gospel, especially in the United States. However, studies are beginning to cast doubts on this “consensus.” University of Glasgow professor Andrew Cumbers has recently asserted that “contrary to the current received wisdom, the experience and performance of statist public ownership was highly varied.”40 For instance, “Korea, Taiwan and Singapore all used state-owned enterprises to fuel spectacular economic growth.”41 Similarly, in 2000, Tel Aviv University professor Yair Aharoni concluded that “[t]he assumption that ownership per se creates an environment that is conducive to high or low performance is not proven, and empirical research on this point has yielded conflicting results.”42 And writing in the Harvard International Journal, Francisco Flores-Macias and Aldo Musacchio maintain that “the world has changed” and certain modern public enterprises can be “efficient, even in comparison to their private counterparts.”43

How efficiency is defined and conceptualized is rarely discussed, yet crucial. Because public enterprises often exist to fulfill social, not just market, requirements, traditional measures of efficiency are not adequate. According to Aharoni, “it is not enough to measure performance in strict economic terms. One has to measure the stimulus provided to other socioeconomic activities and other externalities . . . . Financial measures are misleading for those who see [a public enterprise] as a government instrument that should strive to achieve objectives such as a more egalitarian distribution of income, regional development, technological self-sufficiency, poverty reduction, or development.”44

Additionally, contrary to the dominant perspective, comparing the efficiency of public and private enterprises is problematic. There are not usually directly comparable firms operating within the same sector of the same country at the same time. In one of the few studies to investigate roughly comparable firms—in this case public and private railways in Canada— Douglas Caves and Laurits Christensen found that competition improves efficiency and “[o]ur principal conclusion is that public ownership is not inherently less efficient than private ownership.”45 Another exception, often considered the best for comparison, is the utility sector in the United States where public enterprises operate alongside private investor owned companies. However, in the words of Aharoni, “[o]verall, the studies of electricity utilities in the United States do not provide support for the assumed superiority of private ownership.”46 Harvard University professor John Donahue is even more emphatic. He found that “the evidence broadly contradicts the common presumption that private utilities will operate more efficiently than their public counterparts.”47 In fact, a recent American Public Power Association (APPA) study found a median net revenue transfer to municipalities of 5.2 percent of revenues for public utilities. By contrast, the median tax payment of investor-owned utilities was 25 percent less or 3.9 percent of gross revenues.48

A related charge is that public ownership is naturally overly bureaucratic and subject to political interference and cronyism, which in turn can negatively impact efficiency (either in a traditional accounting sense or in terms of maximization of social goals) and drain public resources. In reality, however, few modern public enterprises in the developed world are structured in ways that validate these charges. Public ownership comes in many different forms (wholly owned, majority owned, minority owned, listed, non-listed, etc.) and organization varies from country to country, industry to industry, and between different levels of government based on differing legal and legislative framework. As a general rule, most public enterprises have independent boards responsible for day-to-day management and decision-making. They are accountable to representative bodies and the legal system, externally audited, physically separated from regulatory entities, and relatively transparent in their decision-making. Often they are financially self-sufficient and take no public funds to finance operations (with profits, or portions thereof, either re-invested in the enterprise or dispersed to the public). For example, the 80 year old Tennessee Valley Authority (TVA)—one of the nation’s largest power companies with around $11.2 billion in revenues, more than 12,000 employees, and a 99.9 percent reliability rating—is a wholly-owned agency of the federal government.49 However, it has an independent board (appointed by the President and confirmed by the Senate—seven of whom have to be local residents), is fully self-funded (including by issuing AAA rated bonds to private investors), is overseen by committees in the House and Senate, is externally audited, files annual and quarterly reports, invites public and staff comment on certain decisions, and is subject to Freedom of Information Act requirements.

While the TVA is not immune to criticism—especially with regards to its environmental performance—its financial impact in the region it operates is significant. In 2012 the TVA returned a record $579 million to state and local governments in Tennessee, Alabama, Mississippi, Kentucky, Georgia, North Carolina, Virginia, and Illinois (5 percent of gross power proceeds in lieu of taxes), and is estimated to have paid a total of $10.3 billion in such payments since 1941.50

## Adv 1

### 1NC – FERC Solves

#### FERC Regulations solve

Johnston 21 (Kimberly Johnston, Partner, Power & Utilities, Ernst & Young LLP, June 15th, 2021, “Landmark FERC decision opens market for distributed energy resources” Ernst & Young, <https://www.ey.com/en_us/power-utilities/ferc-opens-market-for-distributed-energy-resources>) MULCH

Today’s regulatory framework is based on the traditional centralized energy delivery model which is becoming outdated given the uptick in carbon-free technologies. The Federal Energy Regulatory Commission (FERC) and state public utility commissions continue to focus on modernizing regulations to promote a level playing field for new market participants, approve the rate recovery of pilot programs and offer incentives for grid performance enhancements. Co-developing the regulatory framework needed for tomorrow’s carbon-free economy is critical to a successful transition to the future customer-centric, decentralized and carbon-free operating model.

There is going to be a lot more demand for electricity, both with electrification and demand for cleaner resources. We have to figure out policies that will hopefully promote a greater investment in the transmission grid to facilitate access to cleaner resources. Rick Glick, FERC Chairman

One recent monumental regulatory policy change occurred with the issuance of Order No. 2222 by FERC. This Order will essentially open the wholesale electricity markets to distributed energy resources. This is historic because the policy is ahead of the carbon-free technologies that will transform the way energy is produced and delivered across America.

FERC Order 2222

On September 17, 2020, FERC issued a landmark ruling, Order No. 2222, requiring Regional Transmission Organizations (RTOs) and Independent System Operations (ISOs) to amend their tariffs to allow distributed energy resources (DERs) to fully participate in the wholesale electricity markets and compete alongside traditional energy market players.

Order No. 2222 is intended to remove market barriers to participation of DERs in the RTO/ISO wholesale electricity markets, which represents two-thirds of customers across the US energy market. The Order enhances market competition while ensuring that RTO/ISO wholesale electricity markets produce just and reasonable rates.

Order No. 2222 presents a huge opportunity for investor-owned utilities and key stakeholders to design the future carbon-free, distributed operating model with the customer at the center.

Each RTO/ISO grid operator must submit FERC compliance filings by July 19, 2021. A filing must propose an implementation plan tailored for its region and must outline how the final rule will be implemented in a timely manner.

### 1NC – Courts Solve

#### Their Wara ev – though agreeing that there are anticompetitive practices – concludes NEG, saying courts do NOT shield them under any of the regulatory immunity doctrines now

Wara 17 (Michael Wara, Associate Professor and Justin M. Roach, Jr. Faculty Scholar, Stanford Law School. “Competition at the Grid Edge: Innovation and Antitrust Law in the Electricity Sector,” NYU Environmental Law Journal, vol.25, 10-25-2017, https://www.nyuelj.org/wp-content/uploads/2016/09/Wara\_ready\_for\_printing\_v2.pdf)

In this Article, I detail the utility industry response to the call to action in Disruptive Challenges. I present evidence for the widespread existence of potentially anticompetitive actions by utilities from a survey of rate cases. My survey shows that, from 2013 to 2015, utilities in at least 19 states sought to restructure rates to reduce competition from distributed energy resources. Some utilities are also going into direct competition with solar providers. I explore the legal implications of this response by today’s utility industry to current and anticipated competition from distributed solar generation. I examine the ambiguities that exist in the current doctrine on utility antitrust immunity. I then suggest approaches for public utility commissions that may serve to reduce the anticompetitive aspects of new rate structures and so reduce the risk of antitrust liability for electric utilities as they respond to emerging competition from distributed energy resources. Finally, I argue that in managing responses to competition by electric utilities, public utility commissions must exercise oversight of the competitive impacts of rate cases.

In this Article, I outline the key dimensions of the nascent response by regulated electric utilities to competition and then apply an antitrust filter to these responses. In Part I, I describe and provide the first synthesis and analysis of utility response to solar generation since the publication of Disruptive Challenges. Utilities in many parts of the country are moving quickly to change rates in ways that reduce the competitive threat. In Part II, I explain the traditional shields from antitrust enforcement that have been applied to state-regulated industries such as electric utilities. The most important of these are the state action immunity doctrine and the filed rate doctrine. I then assess the extent to which current utility responses to competition are likely to be shielded from antitrust liability. I find that there is substantial risk that a reviewing court would not shield the activities outlined in Part I from antitrust liability. In Part III, I describe a set of strategies that utilities and their regulators might take to reduce these risks while also increasing the transparency of their decision making in ways that will allow for greater stakeholder participation and input, including direct examination within the rate-making process of the impacts of new rate structures on competition between utilities and distributed energy resource providers.

### 1NC – No Solve

#### Even without immunity, cases still fail

Sandeep Vaheesan 13, Special Counsel at the American Antitrust Institute, J.D. from the Duke University School of Law, M.A. in Economics from Duke University, “Market Power in Power Markets: The Filed-Rate Doctrine and Competition in Electricity,” University of Michigan Journal of Law Reform, Vol. 46, 2013, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1010&context=mjlr

IV. WHY ELIMINATING THE FILED-RATE DOCTRINE IS NOT SUFFICIENT TO CREATE COMPETITIVE POWER MARKETS

Congress or the Supreme Court can promote competitive power markets and more affordable electricity by limiting application of the filed-rate doctrine to exclusionary conduct.221 The filed rate doctrine should not bar antitrust suits alleging collusive behavior in the industry. The distinction between collusive and exclusionary conduct offers guidance on how the filed rate doctrine should be applied in electricity markets. Courts have the ability to remedy collusive conduct through damage awards but are much less competent at addressing exclusionary conduct that involves transmission access.2 22 A sensible legal rule would recognize this distinction. On the one hand, purchasers of power should have all the usual antitrust remedies against generators accused of collusion. On the other hand, market participants that allege exclusionary conduct like discriminatory access to transmission should face the filed-rate bar or similar immunity and instead be directed to seek relief from the industry experts at FERC.

The KeySpan episode in New York City shows how private antitrust enforcement could promote competitive power markets. FERC failed to prevent or remedy a two-year period of anticompetitive behavior that likely cost ratepayers more than $100 million and did not pursue any enforcement action after it learned of the misconduct.223 Notably, in its public statements, the Department of Justice suggested that it pursued disgorgement-a rarely used remedy in public antitrust enforcement 224 -against KeySpan because the filed-rate doctrine barred private damages actions.225 Given the imperfect ability to detect collusion, even full disgorgement of gains from anticompetitive behavior inadequately deters such conduct.226 Private antitrust suits would allow direct purchasers of power to recover the overcharges they paid (and more after trebling) and strongly deter future anticompetitive behavior.

Although the present application of the filed-rate doctrine is problematic and allows some types of market misconduct to go unpunished, the actual benefits of a judicial or legislative repeal or limitation of the doctrine should not be overstated. The KeySpan episode shows how restricting the scope of the filed-rate doctrine can produce better market outcomes. The threat of private antitrust damages actions could have deterred what amounted to explicit collusion between rival generators. Express collusion between generators, however, is not the sole or even primary reason why restructuring the industry has not delivered the promised consumer benefits. Two important forms of anticompetitive market behavior-unilateral withholding and tacit collusion-are permissible and difficult to prosecute, respectively, under long-standing interpretations of the antitrust laws. In other words, the antitrust laws do not proscribe the entire universe of anticompetitive conduct that occurs in electricity markets.

A. The Exercise of Unilateral Market Power Is Not Proscribed by the Sherman Act

Today, Section 2 of the Sherman Act does not prohibit dominant firms from charging whatever price the market can bear.227 Companies with monopoly power do not violate the Sherman Act unless that power is maintained or extended through some exclusionary act. At times, Congress and the courts have considered using Section 2 to attack the mere existence of monopoly power. In 1976, Senator Philip Hart proposed expanding Section 2 to deconcentrate industries marked by durable monopoly power.228 This and similar proposals garnered significant attention but were never enacted. In his famed opinion in United States v. Aluminum Co. of America, Judge Learned Hand raised the possibility of "no-fault" monopolization.2 29 He rejected such a rule, though, stating that "[tlhe successful competitor, having been urged to compete, must not be turned upon when he wins."230 Since the mid-1960s, the Supreme Court has held that excluding rivals and possessing monopoly power are both necessary elements for establishing a monopolization claim.23

The charging of high prices is arguably an important part of the competitive dynamic. In theory, high prices in a market, while imposing short-term pain on consumers, should attract new entry and help reallocate scarce resources toward high-value uses and away from low-value ones in the long run.2 3 2 The Supreme Court has taken this idea to an extreme in recent years. In its controversial ruling in Verizon Communications v. Law Offices of Curtis V Trinko, LLP, the Supreme Court asserted in dicta that "[t] he opportunity to charge monopoly prices-at least for a short period-is what attracts 'business acumen' in the first place; it induces risk taking that produces innovation and economic growth."2 33 Although this may be an empirically dubious position, the Court has thus treated the ability to charge high prices as an essential part of the market dynamic-the antithesis of the no-fault monopolization position. Even when viewing the hyperbolic dicta of Trinko with skepticism, high prices also play an important role in electricity markets. High prices signal to investors when, where, and what type of new generation needs to be constructed.23 4

Due to long-standing reading of the Sherman Act, generators that economically or physically withhold electricity from the market do not automatically violate Section 2. They can thus reduce their output to increase their own profits and effect large wealth transfers from consumers. While such conduct may run afoul of RTO rules and other state and federal laws, it does not violate Section 2 under its present judicial articulation.2 35 If, for example, power purchasers had sued TXU in the wake of its anticompetitive conduct in the summer of 2005 had overcome the filed-rate doctrine, they likely would have not obtained antitrust damages. By all appearances, TXU was only exercising its own market power, and did not engage in conduct that excluded rivals from competing against it on a level playing field.23 6 Likewise, based on the allegations in Utilimax,237 the plaintiff would not have been able to obtain damages even in the absence of the filed-rate doctrine. The plaintiff alleged that the defendant had exercised its monopoly power but had made no suggestion that this monopoly power was obtained through exclusionary or other improper conduct.2 38 Even the California crisis appears to be the result of generators unilaterally maximizing their individual profits rather than colluding.23 9 Assuming the filed-rate doctrine had not been applied, private antitrust suits likely still could not have remedied this extended period of market misconduct, which allowed producers to capture billions of dollars from consumers.

B. Tacit Collusion Is Often Beyond the Reach of the Sherman Act

Tacit collusion, also known as conscious parallelism, in oligopolistic industries has been one of the most intractable problems in antitrust law. It involves firms setting supracompetitive prices without any overt agreement or direct communication between them.24 In oligopolistic markets, the profits of firms are dependent on the expected behavior of their rivals. 24 ' Because of this strategic interaction, smaller players may, for example, recognize it is in their selfinterest to follow the prices of a market leader, all without ever directly communicating with each other.2 42 The result may be to mimic the price effects of a cartel without any overt communication-let alone agreement-between participating firms. 243

Noted antitrust scholars have debated what to do about tacit collusion in oligopolistic markets. Donald Turner, the head of the Antitrust Division at the Department of Justice in the Kennedy Administration and then-author of the leading antitrust treatise, thought that tacit collusion was a common problem in concentrated markets in the mid-twentieth century.24 He argued, however, that there is no satisfactory remedy for tacit collusion under Section 1-how could courts enjoin firms from ignoring the pricing decisions of their rivals?245 He said that courts should not impose Section 1 liability for tacit collusion "without more in the way of 'agreement' than is found in 'conscious parallelism."'2 46 Instead, he called on using Section 2 of the Sherman Act to reduce market concentration in oligopolistic markets as a means of addressing persistent tacit collusion. 247

Judge Richard Posner has presented a contrasting view, arguing that tacit collusion is not as prevalent as Turner claimed. According to Posner, tacit collusion is not an inevitable feature of oligopolistic markets; industry characteristics and practices often create strong incentives for undercutting the collusive price.248 As a consequence, Posner has said that tacit collusion is a product of "voluntary behavior" and should be addressed under Section 1.249 Thus, in his view, courts should look to market conduct and price effects in determining whether firms have colluded tacitly.2 50 Regarding appropriate remedies, Posner endorsed the use of private damages, civil and criminal penalties, and, in exceptional cases, divestitures but rejected judicial regulation of pricing behavior. 251

The courts have generally followed the Turner approach to tacit collusion. Although tacit collusion is not categorically legal under the antitrust laws, plaintiffs still face significant evidentiary hurdles in bringing a successful claim. The Supreme Court has long held that mere parallel behavior is legal under the antitrust laws.2 52 To establish an agreement under Section 1, the plaintiff must show the existence of "plus factors" in addition to the existence of parallel market conduct.2 53 The courts have not enumerated an exhaustive list of these factors, but some have been used repeatedly to establish liability in parallel conduct cases. An anticompetitive arrangement may be inferred if there is (1) proof that rivals did or could have communicated directly, (2) evidence of anticompetitive intent behind the parallel conduct, (3) behavior so complex as to be unlikely to occur without detailed communication among rivals, or (4) behavior that is unlikely to be rational in the absence of an agreement. 254 The 2007 Supreme Court decision Bell Atlantic Corp. v. Twombly raised the hurdles for plaintiffs trying to bring a successful tacit collusion claim.2 55 It held that a defendant's motion to dismiss in a conscious parallelism case must be granted unless a plaintiff can plausibly allege plus factors at the prediscovery stage in litigation.2 56

Given the present state of antitrust jurisprudence, tacit collusion in electricity markets may be persistent and yet incurable under the Sherman Act. The transparent pricing and repeated game nature of centralized wholesale power markets may simplify collusion among generators in RTO regions.2 57 The threat of quick detection and punishment make defection from such arrangements less profitable and consequently less likely than in other industries . 258 Tacit collusion in an industry conducive to it may make actual agreement on price or output unnecessary. 25 9 This is an important virtue from the perspective of suppliers. Even with the filed-rate doctrine, electricity market participants who engage in more overt forms of collusion face the risk of civil and criminal prosecution by the government.26 Generators may thus be able to engage in persistent parallel pricing above competitive levels without triggering any of the plus factors that could invite legal liability.

### 1NC – No Modelling

#### No modelling – their Shen ev’s speaking normatively, NOT predictively – AND it’s about regulation, NOT antitrust – i.e. counterplan, NOT plan

#### Perceived irrationality and instability of our process prevents policy diffusion, even when the outcome’s good

William E. Kovacic 15, Professor of Law and Policy at George Washington University, former General Counsel for the Federal Trade Commission, J.D. from Columbia University, “The United States and Its Future Influence on Global Competition Policy,” George Mason Law Review, Vol. 22, 2015, accessed via Lexis

One force that reduces the perceived legitimacy of the U.S. system is a widely accepted narrative, reflected in popular discourse and scholarly commentary, which portrays federal enforcement as irrational and unstable. 65 [\*1172] In this interpretation of modern U.S. enforcement history, antitrust policy undergoes recurring erratic shifts, with a small number of lucid intervals. For the most part, the irrationality narrative suggests that U.S. antitrust policy embraced unsupportable extremes of over-enforcement in the 1960s and 1970s, under-enforcement from 1981 to 1988 and 2001 to 2008, and achieved a sensible, balanced equilibrium only from 1993 to 2000 and 2009 to the present. 66 This accounting of antitrust history raises a troublesome question: why should any jurisdiction outside the U.S. respect a system that has lost its mind in roughly 41 of the past 55 years?

Policy-making in the irrationality narrative is sharply discontinuous, and the enforcement institutions have little evident capacity for self-assessment or correction over time. 67 Individual leaders count for everything, and institutional arrangements fail to discipline policy-making; 68 appoint a wise official and you get good results, but pick a zealot and the agency swerves toward frantic hyperactivity or utter indolence. The irrationality narrative is the public policy equivalent of an interpretation of Formula One racing that attributes the outcome in races entirely to the driver and treats the quality of the car and supporting team as largely irrelevant.

### 1NC – Global Solves

#### BUT, it’s NOT key – the rest of the world’s already doing it

Allnutt 20 (Jason Allnutt, Conformity Assessment Program Specialist for the IEEE Standards Association, “Understanding interconnection of distributed energy resources (DERs),” Energy Storage News, 12-23-2020, https://www.energy-storage.news/understanding-interconnection-of-distributed-energy-resources-ders/)

Adoption of distributed energy resources (DERs) is surging around the world. DERs are bringing unique benefits to the global energy landscape that central-station power plants and long-distance transmission and distribution alone could not. DERs allow for power to be generated when and where it is most needed, and decentralising power production can contribute to a dramatically more secure and resilient facility for electricity delivery. DERs interconnected with the grid position a utility to better manage peak demand, avoid transmission overloads and keep electricity flowing to its customers.

### 1NC – Too Late

#### DERs can’t solve ANY of their impacts in time

--new IPCC report said we have 4 years before their catastrophic impacts are locked in – absolutely no chance DERs can scale in time, even if they’re right

--already past tipping points, even with net zero emissions, ice and permafrost/methane hydrates will continue melting for centuries, causing their impacts regardless

King 21 (David King, Founder and Chair, Centre for Climate Repair at Cambridge, University of Cambridge; and Jane Lichtenstein, Associate, Centre for Climate Repair at Cambridge, University of Cambridge; “Surviving the next 50 years is an existential crisis – 3 things we must do now,” The Print, 8-14-2021, https://theprint.in/opinion/surviving-the-next-50-years-is-an-existential-crisis-3-things-we-must-do-now/715069/)

The only way to reverse some of these catastrophic patterns, and to regain a kind of stability in climate and weather systems, is “climate repair” – a strategy we call “reduce, remove, repair” – which demands that we make very rapid progress to net zero global emissions; that there is massive, active removal of greenhouse gases from the atmosphere; and, in the first instance, that we refreeze the Earth’s poles and glaciers to correct the wild weather patterns, slow down ice-melt, stabilise sea level, and break the feedback loops that relentlessly accelerate global warming. There are no either/or options.

Reducing emissions

About 70% of world economies have net zero emissions commitments over varying timescales, but this has come too late to restore climate stability.

The IPCC has asked for accelerated progress on this trajectory, but whatever happens, current emission rates of atmospheric greenhouse gases imply global warming of 1.5℃ by 2030 and well over 2℃ above pre-industrial level by the end of the century – a devastating outcome. In particular, melting ice and thawing permafrost are considered inevitable even if rapid and deep CO2 emissions reductions are achieved, with sea-level rise to continue for centuries as a result. In every area of the world, climate events will become more severe and more frequent, whether flooding, heating, coastal erosion or fires.

There are definitely important steps that can still reduce the scale of this devastation, including faster and deeper emissions reductions. However, this is not enough on its own to avert the worst. Together there is real evidence that the massive removal of greenhouse gases from the atmosphere and solutions such as repairing the Earth’s poles and glaciers could help humanity find a survivable way out of this crisis.

### 1NC – No Climate Impact

#### Warming won’t be existential

Dr. Benjamin Zycher 21, Senior Fellow at the American Enterprise Institute, Doctorate in Economics from UCLA, Master in Public Policy from the University of California, Berkeley, and Bachelor of Arts in Political Science from UCLA, Former Senior Economist at the RAND Corporation, Former Adjunct Professor of Economics at the University of California, Los Angeles (UCLA) and at the California State University Channel Islands, and Former Senior Economist at the Jet Propulsion Laboratory, California Institute of Technology, “The Case for Climate Change Realism”, 6/21/2021, https://www.aei.org/articles/the-case-for-climate-change-realism/

CLIMATE TRENDS

Beyond exhibiting extreme overconfidence in a cherry-picked analysis of climate-change causes, politicians and activists frequently ground their alarmism in frightening predictions about consequences that are likewise far from certain. This is not only true within the very new (and still quite unreliable) field of predictive climate science; it is true even in the context of ongoing climate phenomena. Indeed, politicians and journalists frequently characterize dramatic or unusual climate phenomena as the product of anthropogenic climate change, yet there is little evidence to support those claims.

For one thing, there is no observable upward trend in the number of “hot” days between 1895 and 2017; 11 of the 12 years with the highest number of such days occurred before 1960. Since 2005, NOAA has maintained the U.S. Climate Reference Network, comprising 114 meticulously maintained temperature stations spaced more or less uniformly across the lower 48 states, along with 21 stations in Alaska and two stations in Hawaii. They are placed to avoid heat-island effects and other such distortions as much as possible. The reported data show no increase in average temperatures over the available 2005-2020 period. In addition, a recent reconstruction of global temperatures over the past 1 million years — created using data from ice-sheet formations — shows that there is nothing unusual about the current warm period.

Rising sea levels are another frequently cited example of impending climate crisis. And yet sea levels have been rising since at least the mid-19th century. This rise is tied closely with the end of the Little Ice Age that occurred not long before, which led to a rise in global temperatures, some melting of sea ice, and a thermal expansion of sea water. There is some evidence showing an acceleration in sea-level rise beginning in the early 1990s: Satellite measurements of sea levels began in 1992 and show a sea-level rise of about 3.2 millimeters per year between 1993 and 2010. Before 1992, when sea levels were measured with tidal gauges, the data showed an increase of about 1.7 millimeters per year on average from 1901 to 1990.

But because the datasets are from two different sources — satellite measurements versus tidal gauges — they are not directly comparable, and therefore they cannot be interpreted as showing an acceleration in sea-level rises. Moreover, the period beginning in 1993 is short in terms of global climate phenomena. Since sea levels have risen at a constant rate, remained constant, or even fallen during similar relatively short periods, inferences drawn from them are problematic. It is of course possible there has been an acceleration in sea-level rise, but even still, it would not be clear whether such a development stemmed primarily from anthropogenic or natural causes; clearly, both processes are relevant.

A study of changes in Arctic and Antarctic sea ice yields very different inferences. Since 1979, Arctic sea ice has declined relative to the 30-year average (again, the degree to which this is the result of anthropogenic factors is not known). Meanwhile, Antarctic sea ice has been growing relative to the 30-year average, and the global sea-ice total has remained roughly constant since 1979.

Extreme weather occurrences are likewise used as evidence of an ongoing climate crisis, but again, a study of the available data undercuts that assessment. U.S. tornado activity shows either no increase or a downward trend since 1954. Data on tropical storms, hurricanes, and accumulated cyclone energy (a wind-speed index measuring the overall strength of a given hurricane season) reveal little change since satellite measurements of the phenomena began in the early 1970s. The number of wildfires in the United States shows no upward trend since 1985, and global acreage burned has declined over past decades. The Palmer Drought Severity Index shows no trend since 1895. And the IPCC’s Fifth Assessment Report, published in 2014, displays substantial divergence between its discussion of the historical evidence on droughts and the projections on future droughts yielded by its climate models. Simply put, the available data do not support the ubiquitous assertions about the causal link between greenhouse-gas accumulation, temperature change, and extreme weather events and conditions.

Unable to demonstrate that observed climate trends are due to anthropogenic climate change — or even that these events are particularly unusual or concerning — climate catastrophists will often turn to dire predictions about prospective climate phenomena. The problem with such predictions is that they are almost always generated by climate models driven by highly complex sets of assumptions about which there is significant dispute. Worse, these models are notorious for failing to accurately predict already documented changes in climate. As climatologist Patrick Michaels of the Competitive Enterprise Institute notes:

During all periods from 10 years (2006-2015) to 65 (1951-2015) years in length, the observed temperature trend lies in the lower half of the collection of climate model simulations, and for several periods it lies very close (or even below) the 2.5th percentile of all the model runs. Over shorter periods, such as the last two decades, a plethora of mechanisms have been put forth to explain the observed/modeled divergence, but none do so completely and many of the explanations are inconsistent with each other.

Similarly, climatologist John Christy of the University of Alabama in Huntsville observes that almost all of the 102 climate models incorporated into the Coupled Model Intercomparison Project (CMIP) — a tracking effort conducted by the Lawrence Livermore National Laboratory — overstate past and current temperature trends by a factor of two to three, and at times even more. It seems axiomatic to say we should not rely on climate models that are unable to predict the past or the present to make predictions about the distant future.

The overall temperature trend is not the only parameter the models predict poorly. As an example, every CMIP climate model predicts that increases in atmospheric concentrations of greenhouse gas should create an enhanced heating effect in the mid-troposphere over the tropics — that is, at an altitude over the tropics of about 30,000-40,000 feet. The underlying climatology is simple: Most of the tropics is ocean, and as increases in greenhouse-gas concentrations warm the Earth slightly, there should be an increase in the evaporation of ocean water in this region. When the water vapor rises into the mid-troposphere, it condenses, releasing heat. And yet the satellites cannot find this heating effect — a reality suggesting that our understanding of climate and atmospheric phenomena is not as robust as many seem to assume.

The poor predictive record of mainstream climate models is exacerbated by the tendency of the IPCC and U.S. government agencies to assume highly unrealistic future increases in greenhouse-gas concentrations. The IPCC’s 2014 Fifth Assessment Report, for example, uses four alternative “representative concentration pathways” to outline scenarios of increased greenhouse-gas concentrations yielding anthropogenic warming. These scenarios are known as RCP2.6, RCP4.5, RCP6, and RCP8.5. Since 1950, the average annual increase in greenhouse-gas concentrations has been about 1.6 parts per million. The average annual increase from 1985 to 2019 was about 1.9 parts per million, and from 2000 to 2019, it was about 2.2 parts per million. The largest increase that occurred was about 3.4 parts per million in 2016. But the assumed average annual increases in greenhouse-gas concentrations through 2100 under the four RCPs are 1.1, 3.0, 5.5, and an astounding 11.9 parts per million, respectively.

The studies generating the most alarmist predictions are the IPCC’s Special Report on Global Warming of 1.5°C and the U.S. government’s Fourth National Climate Assessment, both of which were published in 2018. Both assume RCP8.5 as the scenario most relevant for policy planning. The average annual greenhouse-gas increase under RCP8.5 is over five times the annual average for 2000-2019 and almost four times the single biggest increase on record. Climatologist Judith Curry, formerly of the Georgia Institute of Technology, describes such a scenario as “borderline impossible.”

RCP6 is certainly more realistic. It predicts a temperature increase of 3 degrees Celsius by 2100 in the average of the CMIP models. But on average, those CMIP models overstate the documented temperature record by a factor of at least two. Ultimately, models with a poor record of successfully accounting for past data and highly unrealistic future greenhouse-gas concentrations should not be considered a reasonable basis for future policy formulation.

### 1NC – No Climate Wars

#### Warming won’t cause global conflict

Dr. Ian Cook 20, Senior Lecturer in Global Politics and Policy at Murdoch University, PhD in Political Theory from the University of Queensland, The Politics of the Final Hundred Years of Humanity (2030-2130), Springer Singapore, Kindle Edition

Yet another problem with the assumption that catastrophic human-caused environment change simply causes civil war, as Salehyan and Hendrix noted, is that violence at the scale of a civil war requires significant resources. In their view, civil wars are more likely to occur in times of relative abundance. While “riots and protests, may emerge from conditions of scarcity,” they argue, “sustaining a militant organization requires considerable planning and resources” (Salehyan and Hendrix 2014, p. 240). Reasons to fight might exist. For this to turn into civil war, however, people “also need the capability to do so, and environmental scarcity may limit such capability, thus undermining the resource base necessary for mobilizing armed violence” (Salehyan and Hendrix 2014, p. 240).

A related debate concerns what Adams and colleagues have claimed to be a sampling bias in studies of the connection between environment change and armed conflict (Adams et al. 2018). Levy accepts the existence of some sampling bias but rejects the view that this bias results in an overstatement of the connection between environment change and conflict. “Knowing that case selection is biased is useful, but not a reason to lower our estimate of the climate’s impact on conflict” (Levy 2018, p. 441).

In responding to Levy’s criticism, authors claiming bias wrote that they did not “deny a link between climate change and conflict in principal. Indeed, some of our own recent work indicates that such a link exists, but it is highly conditional.” Their problem with the research being done in this field was that “sampling biases… increase the risk that such links are overstated, that crucial world regions do not receive sufficient attention and that little knowledge is produced on peaceful adaptation” (Ide et al. 2018, p. 442– 3).

After reviewing the literature on the relationship between climate change and violent conflict, Sakaguchi, Varughese and Auld concluded that the “current literature offers mixed evidence. This makes it difficult to render a definitive statement about the climate-conflict relationship” (2017, p. 640). While they pointed out that just over 60% of the studies they reviewed found “that climate change variables are positively correlated with higher levels of violent conflict,” Sakaguchi, Varughese and Auld also argued that “many subtleties and countertrends underlie this overall pattern” (2017, p. 640). Thus, even though “a majority of reviewed studies envision climate variables influencing conflict through a causal pathway, … these pathways are often theoretically underspecified and have only weak empirical support” (Sakaguchi et al. 2017, p. 641).

As Koubi put it, the research that has been done on this question “provides some evidence that climatic changes could act as a ‘threat multiplier’ in several of the world’s regions. In particular, the extant literature shows that climatic conditions can lead to conflict in agricultural-dependent regions and in combination and interaction with other socioeconomic and political factors” (Koubi 2018, p. 200). After having claimed that, to their knowledge, “no one in the field of climate research has suggested that climate change could be the ‘sole cause’ of war, violence, unrest or migration”, Butler and Kefford recommended “viewing climate change instead as a risk multiplier, influencer or co-factor … In this way of thinking, environmental and ecological factors interact with social determinants, including those that are economic, demographic and political, to produce phenomena such as migration, conflict and famine” (2018, p. 587).

There can be no doubt that conflict will increase during the final hundred years of humanity. But it will result from a complex interaction of socio-political factors and a catastrophically changed environment. It may not go beyond conflict between different groups or between the government and opposition groups and become civil war. This depends on the capacity of those opposition groups. In many cases, they will lack the resources to conduct a civil war. The Syrian war is itself a good illustration of the problem, as the groups opposed to the Syrian government have only been able to conduct the extended civil war in which they have been engaged with the support of outside groups. (Mazzetti and Apuzzo 2016).

The question of whether civil war will break out is something that can only be answered “region by region” and the answer must be based on “knowledge of pre-conflict geographies, such as drivers of resilience and vulnerability” (Farbotko 2018). Sometimes governments may abandon territory and opposition groups can seize control of that land. But it is likely to be land that is suffering worst from the effects of catastrophic human-caused environment change and will not be habitable. To replace an existing government or take control of a region within a country through civil war is no simple thing. It may happen. But it will not happen on the scale that some people have predicted. And it will not happen just because of the weather.

## Prices

### New Scenario

Can’t solve – scenario is about short term surges, their internal links are about long term inflation

Bordachev is about Squo rebellions – Ukraine situation proves that invasions are inevitable, aff cant stop them in time, and tons of alt causes

#### No war—relations are strong and resilient

Keck, 13 (Zachary – assistant editor of The Diplomat, 3/23, “Ties that Bind: Can China-Russia Relations Endure?”, The Diplomat, http://thediplomat.com/china-power/ties-that-bind-can-china-russia-relations-endure/?all=true)

The long-running consensus in the West and elsewhere has been that China and Russia are destined to clash. According to this narrative, while America’s post-Cold War primacy pushed the two sides together, geography and China’s growing power ensure Beijing and Moscow will be strategic competitors over the long-term.

There’s certainly something to this argument; at the very least these factors ensure mistrust will be a permanent feature of the bilateral relationship. That being said, this ignores the potential areas of cooperation between Russia and China, and fails to tell us how temporary the Sino-Russian relationship truly is.

If President Xi Jinping’s trip to Russia is any indication, the relationship has greater staying power than analysts previously expected. Not only is it symbolically important that Xi has made Russia the destination of his maiden voyage as China’s top leader, but he clearly is placing a lot of importance on the visit. China’s state media have spent the past week covering the trip and Sino-Russian ties in excruciating detail, and Xi has reportedly been brushing up on his rudimentary Russian language skills and even memorizing Russian poetry in order to make a strong impression on his hosts. Given Moscow’s strong desire to be perceived as a great power, Xi likely had Putin and company at “my first overseas trip.”

While Xi’s trip may be a one time event, the growing Sino-Russian energy relationship is premised on long-term cooperation. Just hours after Xi's arrival in Russia on Friday, the head of Russian energy giant Rosneft announced it had reached an "agreement in principle" to more than triple its annual oil exports to China, from 15 million tonnes last year to 45-50 million tonnes at an unspecified future date (likely around 2018). This will make China the largest consumer of Russian oil. As part of the deal, Rosneft and China National Petroleum Corporation (CNPC) will also jointly develop 3 offshore blocks of oil near the Barents Sea and 8 onshore deposits in East Siberia.

**Alt causes to Russia/china war**

Dr. Matthew **Kroenig 20**, Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University, Deputy Director of the Scowcroft Center for Strategy and Security at the Atlantic Council, “The United States Should Not Align With Russia Against China”, Foreign Policy, 5/13/2020, https://foreignpolicy.com/2020/05/13/united-states-should-not-align-russia-against-china-geopolitical-rivalry-authoritarian-partnership/

Now these revisionist autocratic powers are once again working together closely. In response, many national security strategists have argued that the **U**nited **S**tates should seek to **peel them apart** by **working with Russia** to counter the even bigger threat of China. But this recommendation is **misguided**. Autocracies like China and Russia will not form a deep strategic partnership, and the costs of cozying up to Russia far outweigh the benefits. Fortunately, there is a better path: Washington can leverage its democratic advantages, working with its existing democratic allies to counter both Beijing and Moscow at the same time. The growing Russian and Chinese strategic relationship is worrying. The two autocratic powers have cooperated on major energy deals, including a blockbuster $55 billion arrangement to pipe Siberian natural gas into China. Russian President Vladimir Putin and Chinese President Xi Jinping have met in several high-level summits, and Xi even declared Putin “his best friend and colleague.” Perhaps most troubling, Beijing and Moscow have participated in joint military exercises in both Europe and Asia. If they were to coordinate and conduct simultaneous military attacks on the U.S. alliance system in Eastern Europe and the Indo-Pacific, for example, the United States and its allies could be overwhelmed. These facts have led many observers to conclude that the solution is to play them off against each other. Just as President Richard Nixon opened to China to work against Moscow during the Cold War, they argue, today Washington could do the reverse. China is the bigger threat now, so the United States could partner with Russia against the rising power in East Asia. Former U.S. Secretary of State Henry Kissinger has reportedly urged this course of action directly in conversations with President Donald Trump, and Robert Blackwill of the Council on Foreign Relations—a former U.S. ambassador to India—has recommended that Washington “make concessions in order to improve its **relation**ship with Moscow” as part of a strategy to counter China. And these and similar options are being considered in the working levels of the U.S. government. But Russia and China will **not** form an effective alliance against the **U**nited **S**tates anytime soon. In a new book, I examined the strengths and weaknesses of democracies and autocracies in great-power competition and found that autocracies are **poor alliance builders**. The ease with which **unconstrained** dictators **rapidly shift** their country’s **policies**, backtrack on commitments, and **dissemble** are **not** traits that are **conducive** to building international partnerships. Indeed, **history shows** that autocratic allies tend to **fight** each other more than the enemy. In spite of the Molotov-Ribbentrop Pact, Adolf **Hitler** turned on and invaded the Soviet Union, betraying his partner Joseph Stalin. The major military action of the **Warsaw Pact** during the Cold War was attacking its own members, Hungary and Czechoslovakia. The last time China and Russia were aligned, they nearly fought a nuclear war with each other in the 1969 Sino-Soviet border conflict. And Putin invaded **Ukraine** and **Georgia** at a time when these countries were involved in the Russian-led Commonwealth of Independent States. Moreover, there are **many conflicts of interest** between Russia and China that will push them apart **without any help** from the **U**nited **S**tates. Depopulation in **R**ussia’s **F**ar **E**ast has led to fears that an expanding China will attempt a land grab. Russian colleagues report that Russia’s new nuclear-armed intermediate-range missiles are not aimed at NATO but meant to deter a rising China. More broadly, Moscow was the senior partner during the Cold War, and Putin will **not be keen** to now play **second fiddle** to Beijing.

### 1NC – Prices

#### Energy and electricity prices are declining, but there are alt causes

Talmon Joseph Smith 12-7, Economics Reporter at the New York Times, “Sinking natural gas prices are a sign of hope for household winter heating bills.”, New York Times, 12-07-2021, https://www.nytimes.com/2021/12/07/business/natural-gas-prices.html

After hitting their highest levels since 2014 mere months ago, natural gas prices have tumbled in recent weeks, falling more than 10 percent on Monday alone, a development that could bring much-needed relief to many Americans who had been bracing for high home heating bills this winter.

The latest drop came after the release of updated government weather forecasts projecting a warmer-than-expected winter. Prices for natural gas traded on the futures market are now back down to levels that prevailed last summer and are down about 41 percent from their peak in October.

After taking a sharp dive during the height of pandemic lockdowns as the economy slowed, energy and other commodity prices soared this year as the economic recovery accelerated and many goods and raw materials became snarled in tangled global supply chains.

Natural gas, used to heat almost half of U.S. households, almost doubled in price earlier this fall. Prices remain higher than they were during the depths of the pandemic, at about $3.75 per thousand cubic feet on the New York Mercantile Exchange. Those prices are up about 50 percent since January, but are far lower than in late October, when they exceeded $6 per thousand cubic feet.

Natural gas prices recently took a sharper turn down as the weather in much of the country was warmer than expected. Concerns about the supply of gas, which have been a much bigger problem in Europe, have also eased in the United States.

“We’ve still got January, February, March — but it’s certainly a good sign that its coming down,” said Mark Wolfe, the executive director of the National Energy Assistance Directors’ Association, a group of state officials that provide assistance to households in need. “If it’s a warmer winter, then our estimates about consumption will be down, and if consumption is down, that’ll reduce the price of the fuel. It’s a good sign.”

Even if the winter months are not as cold as on average, other factors, including limited supply and strong demand for gas from power plants and other users, could keep heating costs high, energy experts said.

Conversely, gas prices could drop further if the Omicron variant of the coronavirus proves more dangerous than expected, slowing the economy and sapping demand for goods and services.

Good news about energy prices has been uncommon for consumers lately. The broad gauges of inflation have been running at the highest rates in decades. The vagaries of the weather, and climate change, may now cut them at least a temporary break. Several states have experienced some of their warmest December days on record. The temperature in Central Park reached 61 degrees on Monday.

According to the National Oceanic and Atmospheric Administration’s Climate Prediction Center, above-average temperatures throughout the South and most of the East could predominate for most of this winter.

Jon Gottschalck, the chief of the operational prediction branch at NOAA’s Climate Prediction Center, said those milder conditions would be the result of the recent development of atmospheric conditions known as La Niña. But he warns that all forecasts are “probabilistic,” not certainties, and that “volatile” severe cold snaps should still be expected in the months ahead.

In its short-term energy outlook released Tuesday, the U.S. Energy Information Agency noted that “the evolving effects of consumer behavior on energy demand because of the pandemic present a wide range of potential outcomes for energy consumption.”

#### Interventions solve economic effects – expert consensus

Ernest “Doc” Werlin, 12/27. Spent 35 years in fixed income as a trader and corporate bond salesman, including time as a partner at MorganStanley in charge of corporate bond trading. "Doc’s Prescription: U.S. economic outlook for 2022." Sarasota Herald-Tribune, December 27, 2021. https://www.heraldtribune.com/story/business/2021/12/27/economists-expect-u-s-enjoy-solid-economic-growth-2022/9022524002/

There is a growing consensus that the United States will enjoy solid economic growth in 2022 despite concerns about inflation, supply chain disruptions, COVID-19 and Federal Reserve tightening. The Conference Board, a research group comprising more than 1,000 public and private corporations, forecasts that the U.S. economy will grow by 3.5% in 2022.

The main challenges to the United States and the global economy in the next decade come from a continued trend toward deglobalization and faster-than-expected inflation. The transition toward decarbonization of economies in response to climate change will create challenges and opportunities for global growth.

Despite the acceleration of new COVID-19 cases in December, largely associated with the delta and omicron variants, America enjoyed strong growth in Q4 2021.

A shopper shops at a retail store in Glenview, Ill., on Thursday. Holiday sales rose at the fastest pace in 17 years, even as shoppers grappled with higher prices, product shortages and a raging new COVID-19 variant in the last few weeks of the season, according to one spending measure.

COVID-19 remains a threat but its economic impact is fading. There remains uncertainty regarding the transmissibility, severity, and effectiveness of existing vaccines against omicron. World Health Organization officials, in recognition of the dangers inherent with COVID-19, are advocating more coordinated and decisive efforts to vaccinate the world’s population to prevent the emergence of new, more dangerous variants.

The Food and Drug Administration recently granted emergency authorization to Pfizer’s COVID treatment pill for patients 12 years and up with mild to moderate COVID symptoms who are most likely to end up hospitalized. The agency said it should be prescribed as soon as possible after diagnosis and within five days of symptom onset.

The United States is experiencing robust but an uneven rebound from the pandemic. Demand growth is outstripping supply growth because of unprecedented fiscal and monetary stimulus.

A consensus of economists forecast a decline in the unemployment rate from the current 4.2%. The Bureau of Labor Statistics wrote, “As the nation’s demographic shift continues, with the baby-boom generation moving into retirement, the labor force participation rate will continue to decline, moderating growth.”

The U.S. Census Bureau released a report that the U.S. population grew at a slower rate in 2021 than in any other year since the founding of our nation. This year was the first time since 1937 that the U.S. population grew by fewer than one million people.

In response to COVID-19, households have redirected their spending away from activities that are “locked-down” (food and entertainment) and toward durable goods. Governments have eased COVID restrictions because of vaccines and the ability to more precisely target and curtail certain types of activities.

On Wednesday, in a fresh sign of his growing concerns about inflation, Federal Reserve Chairman Jerome Powell said the Federal Reserve can't be sure that price increases will slow in the second half of next year. To stem inflation, we can expect the Fed to stop bond purchases and raise interest rates three times in 2022.

### 1NC – Econ !

#### No impact

Walt 20. [Stephen, Robert and Renée Belfer professor of international relations at Harvard University and a columnist for Foreign Policy. Will a Global Depression Trigger Another World War?. Foreign Policy. 5-13-2020. https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term

### Inflation

#### Your inflation evidence is about oil --- which the aff can’t solve

#### Energy prices are down and not driving inflation relative to other causes

Tepper 1-12 [Taylor Tepper Forbes Advisor Staff 1-12-2022 https://www.forbes.com/advisor/investing/why-is-inflation-rising-right-now/]

Inflation is here. The most recent Consumer Price Index (CPI) inflation report showed that prices rose across the board in December.

Overall, prices climbed 7% year-over-year, the largest increase since June 1982. The Bureau of Labor Statistics (BLS) cited big gains in the food and used vehicle prices as drivers of higher inflation over the last month. Energy prices have cooled off since November, with total prices down 0.4% over the month—although the 12-month gains are still nearly 30%.

When you strip out volatile food and energy prices—so-called core CPI inflation—the picture was somewhat brighter. Prices rose by 0.6% in December, and climbed by 5.5% over the last 12 months.

Certain items contributed mightily to these historic gains, as any driver can attest. Prices of vehicles are up nearly 40% compared to 12 months prior, food is 6.3% higher. Shelter costs have risen by 4.1% during the same period.

Inflation Is Enemy #1 for the Fed

The Federal Reserve has two jobs: Keep inflation under control and maximize employment. After spending 2021 promising that higher inflation was merely a passing phenomenon, Fed officials begun dialing up the rhetoric and declaring that inflation is now a major threat to the labor market and the rest of the economy.

“High inflation is a severe threat to the achievement of maximum employment,” Fed Chair Jerome Powell told the Senate Banking Committee in his confirmation hearings on January 11.

At the December meeting of the Federal Open Market Committee (FOMC), the Fed announced plans to speed up its plan for ending bond purchases—a major component of its emergency support for the economy during the Covid-19 pandemic. This is key, as ending this program is necessary so that the central bank can start raising interest rates.

Increases to the federal funds rate could begin as soon as spring 2022, and commentators expect the Fed may hike rates three or even four times this year to fight inflation.

This is a big change in tone for the Fed. Throughout 2021, Powell and other Fed officials branded inflation as “transitory” and asserted it would take care of itself as pandemic supply-chain bottlenecks and other problems associated with reopening died down.

Inflation Gains and the Covid-19 Recession

As high inflation first became an issue in the Spring of 2021, the Fed laid out a few reasons to explain what was going on, which included base effects, supply-chain issues and a tricky labor market.

Base effects are perhaps the most intuitive reason for high price growth. That is, prices dropped considerably throughout 2020 as state governments imposed lockdowns in an attempt to slow the spread of Covid, and so any year-over-year comparison was bound to look outlandish when people began spending more as life returned to normal

This was seen most clearly early on in airfare costs.

Once the Covid-19 pandemic began, demand for travel plummeted, which led to a drop in prices. In April 2020, for instance, airfares fell 24% year-over-year, and they would spend most of the rest of 2020 at these depressed levels.

But once a year passes, these year-over-year comparisons turn: The June CPI report, for instance, compared vaccine-era airline prices to what they were after Covid-19 struck. So it’s not terribly surprising that June 2021 airline prices were almost 25% higher than a year before, if only because so few people were buying tickets then.

This was one of the key points that the Fed had been pounding away at: with vaccines widely available, more people were bound to fly. Yes, airline prices are much higher than a year ago, but they remain cheaper than where they were pre-pandemic.

In fact, airfare prices came down after peaking in June and are now 5% cheaper than in October 2020.

Yet overall inflation is soaring, so something else must be going on, too.

Supply chain issues continue to mess with prices. Take used cars and trucks: While prices declined as the economy went into the recession, it is not the case that used cars and trucks became cheaper than they were in February 2020. In fact, they’ve never been more expensive.

The reasons for that hike are tied to the pandemic, to be sure. Supply is limited thanks to new car production being stymied by an ongoing chip shortage, people hanging onto their leases for longer and rental car companies—a major source of used cars—having fewer to unload after limiting their inventory when the pandemic struck. Plus people who put off buying cars last year are suddenly competing for automobiles today.

The Fed has warned the public over these and other supply-chain issues, saying it’ll take time for sectors of the economy to get back to normal. Once these kinks are worked out, the Fed asserts, inflation will stop growing so quickly. The problem is that these kinks will likely last for more than a year, rather than a few months.

Labor issues are another source of concern. Tens of millions of Americans lost their jobs (or left them voluntarily) during the Covid Recession, which resulted in a lot less stuff being produced. American bank accounts were buttressed with expanded unemployment insurance and direct stimulus, but those dollars were ultimately chasing fewer goods and services since fewer people were working.

Businesses, meanwhile, have had a difficult time throughout 2021 hiring enough workers to satisfy demand, and the labor-force participation rate is 1.7 percentage points lower than before the pandemic.

### 1NC – No price I/L

#### Energy prices don’t cause economy wide inflation

Newell 21 Richard G. Newell is president and CEO of Resources for the Future, a nonprofit research organization, and former administrator of the U.S. Energy Information Administration. Oct. 20, 2021. “Clean Energy Didn’t Cause Recent Price Increases. How to Understand Energy Inflation.” <https://www.barrons.com/articles/why-todays-energy-inflation-is-different-51634677139> {DK}

The energy-price increases we have seen over the past year will no doubt put strain on some American pocketbooks. But that trend should not be an added reason to worry about the broader wellbeing of the American economy. In fact, the energy inflation we’re now seeing may prove to be less of a lasting concern than history might suggest.

To be sure, increasing energy prices and related inflationary concerns are historically associated with shocks to the price of fuels, particularly oil and the products derived from it such as gasoline and fuel oil. While the relationship between fuel prices and inflation has weakened over the past few decades, it’s understandable that many consumers feel anxious about inflation. Many of us remember the energy crises of the 1970s, when both oil prices and inflation skyrocketed as crude-oil exports from the Middle East plummeted. That crisis was compounded by an economic recession, so it is no wonder that people today are left fearful of a broader economic reaction to increasing oil prices. But it is important to remember how much the economy has changed since then. Although consumer energy prices rose 25% over the past year, the “energy share” of the consumer price index is now only 6% to 7%. In contrast, in 1980 the energy share of expenditures was twice that level at 13%. That means that rising energy costs have affected a relatively small and generally declining part of Americans’ cost of living. Therefore, while overall inflation rose 5.4% over the past year, energy contributed about 1.4% of that total.

There are also other reasons energy inflation should be a fading worry and is not a solid rationale for second guessing the need for an energy transition toward lower-carbon energy sources.

First, these price increases represent a return to expected levels after a period of pandemic-induced low demand. From September 2020 to September 2021, the U.S. benchmark price per barrel of oil rebounded from $40 to $72. Historic worries about inflation have been associated with an extended period of demand growth outstripping supply, causing producers to raise prices in response. But the world today has ample reserves of oil and natural gas available for current demand. As supply ticks up in response to consumption returning to pre-pandemic levels, this short-term price correction should stabilize and is not likely to develop into a long-term trend. To put this in perspective, the price of oil averaged about $70 per barrel over both the past 10-year period and past 15-year period, so current prices are a return to more typical levels.

Second, the U.S. energy landscape has changed. We have moved on from a period when the country’s energy needs were increasingly satisfied by imports of oil and gas, to one where the country is a net exporter of energy. This shift in the energy trade balance tends to moderate the overall macroeconomic impact of energy price increases. Moreover, the same technologies that have underpinned the surge in U.S. oil and gas production over the past decade are also more quickly responsive to price swings. That means the recent price increases will incentivize additional supplies much more quickly than in the past.

Above all, it’s important to remember that clean energy did not cause the recent energy-price increases. If anything, I would argue that now is the time to actually increase clean-energy investments. As capital is relatively abundant and interest rates are low right now, it is a prime time to invest in these new technologies. Clean-energy technologies that underpin the budding energy transition—like wind, solar, nuclear power, and electric vehicles—tend to be capital-intensive and do not rely on traditional fuels of inelastic supply and demand like oil and gas to operate. This makes clean energy much less vulnerable to price shocks. Increasing the share of clean energy in the economy is therefore likely to further moderate, rather than exacerbate, inflationary swings. The shift toward a more capital-intensive, fuel-light, and electricity-centric energy system should lead to energy no longer being an outlier in the consumer price index.

### 1NC – Prices UQ

#### Inflation rates peaking now

Franck 22 Thomas Franck Economic Policy Reporter. JAN 12 2022. “Biden says inflation report shows progress in slowing down runaway prices.” <https://www.cnbc.com/2022/01/12/biden-says-cpi-inflation-report-shows-progress-in-slowing-down-high-prices.html> {DK}

President Joe Biden on Wednesday touted the new consumer inflation report as evidence that price jumps have started to slow, but acknowledged that the economy has a ways to go before Americans see cost hikes return to a typical level.

“Today’s report—which shows a meaningful reduction in headline inflation over last month, with gas prices and food prices falling—demonstrates that we are making progress in slowing the rate of price increases,” the president said in a prepared statement.

“At the same time, this report underscores that we still have more work to do,” he added, “with price increases still too high and squeezing family budgets.”

The president’s remarks came hours after the Labor Department said that Americans paid 0.5% more for goods and services in December. That increase put the year-over-year inflation jump at a whopping 7%, the hottest 12-month price gain since 1982.

CPI data shows inflation rose 7% year over year, its highest increase since 1982

But Biden’s remarks highlight what many economists see as evidence that inflation increases appear to be peaking. Prices rose 0.3% in August, 0.4% in September, 0.9% in October, 0.8% in November and 0.5% in December, according to the Labor Department.

Should that trend continue, the lofty year-over-year jumps would ease.

While this downtrend does not suggest that prices are declining, it does indicate that the rate of price increases is falling. That would start the process by which year-over-year inflation would recede back to the Federal Reserve’s 2% target.

# 2NC---Texas R6

## T

## CP---Nationalization

### AT: Blackouts !

**No blackout impact**

**Uchill ’18** [Joe; august 23; internally citing Department of Homeland Security officials and other cybersecurity experts; Axios, “Why "crashing the grid" doesn't keep cyber experts awake at night,” https://www.axios.com/why-crashing-the-grid-doesnt-keep-cyber-experts-awake-at-night-a40563a5-f266-493d-856a-5c9a5c1383dd.html]

Reality check: The people tasked with protecting U.S. electrical infrastructure say the scenario where hackers **take down the entire grid** — the one that's also the plot of the "Die Hard" movie where Bruce Willis blows up a helicopter by launching a car at it — is **not a realistic threat**. And focusing on the wrong problem means we’re not focusing on the right ones.

So, why can't you hack the grid? Here's one big reason: "The thing called the grid **does not exist**," said a **Department of Homeland Security official** involved in securing the U.S. power structure.

Think of the grid like the internet. We refer to the collective mess of servers, software, users and equipment that routes internet traffic as "the internet." The internet is a singular noun, but it’s not a singular thing.

* You can’t hack the entire internet. There’s so much stuff running independently that all you can hack is individual pieces of the internet.
* Similarly, the North American electric grid is **actually five interconnected grids** that can borrow electricity from each other. And the **mini-grids** aren't singular things either. Taking down "**the grid**" would be more like collapsing the **thousands of companies** that provide and distribute power accross the country.
* "When someone talks about 'the grid,' it's usually a **red flag** they **aren't going to know** what they are talking about," says Sergio Caltagirone, director of threat intelligence at Dragos, a firm that specializes in industrial cybersecurity including the energy sector.

Redundancy and resilience: Every aspect of the electric system, from the machines in power plants to the grid as a whole, is designed with **redundancy in mind**. You can’t just break **a thing or 10** and expect a **prolonged blackout**.

* On some level, most people already know this. Everyone has lived through blackouts, but no one has lived through a blackout so big it caused the Purge.
* 'The power system is the most complex machine ever made by humans," said Chris Sistrunk, principle consultant at FireEye in energy cybersecurity. "Setting it up, or hacking it, is more complicated than putting a man on the moon."
* An attack that took out power to New York using cyber means would require a nearly **prohibitive amount** of effort to coordinate, said Lesley Carhart of Dragos. Such a failure would also **tip off other regions** that there was an attack afoot. **Causing** a power outage in New York would likely **prevent** a power outage in Chicago.

## Adv---Warming

### 2NC---FERC Solves

#### **AND, it’s NOT just wholesale markets, but retail too!**

FERC 20 (Federal Energy Regulatory Commission, September 17, 2020, “FERC Opens Wholesale Markets to Distributed Resources: Landmark Action Breaks Down Barriers to Emerging Technologies, Boosts Competition” <https://www.ferc.gov/news-events/news/ferc-opens-wholesale-markets-distributed-resources-landmark-action-breaks-down>) MULCH

The Federal Energy Regulatory Commission (FERC) today approved a historic final rule, Order 2222, enabling distributed energy resource (DER) aggregators to compete in all regional organized wholesale electric markets. This bold action empowers new technologies to come online and participate on a level playing field, further enhancing competition, encouraging innovation and driving down costs for consumers.

DERs are located on the distribution system, a distribution subsystem or behind a customer meter. They range from electric storage and intermittent generation to distributed generation, demand response, energy efficiency, thermal storage and electric vehicles and their charging equipment.

The final rule enables these resources to participate in the regional organized wholesale capacity, energy and ancillary services markets alongside traditional resources. Multiple DERs can aggregate to satisfy minimum size and performance requirements that they might not meet individually.

“Today FERC broke new ground towards creating the grid of the future by knocking down barriers to entry for emerging technologies,” FERC Chairman Neil Chatterjee said, lauding the order. “With this final rule on DERs, we build on the significant progress already made through Order 841 and expand our ability to harness the full potential of these flexible resources. By relying on simple market principles and unleashing the power of innovation, this order will allow us to build a smarter, more dynamic grid that can help America keep pace with our ever-evolving energy demands. I am honored to be at the helm of the agency as we bring this critical rule across the finish line and continue to navigate our nation’s energy transition.”

“I thank Chairman Chatterjee for working with me and my team to help get this much-anticipated final rule over the finish line,” FERC Commissioner Rich Glick said, praising the order. “The rule will enhance grid reliability, expand market competition and reduce consumer electric costs.”

Under the new rule, regional grid operators must revise their tariffs to establish DER aggregators as a type of market participant, which would allow them to register their resources under one or more participation models that accommodate the physical and operational characteristics of those resources.

The new rule builds off the DC Circuit Court’s recent ruling on Order 841, in which the court affirmed FERC’s exclusive jurisdiction over wholesale markets and the criteria for participation in them. Order 2222 prohibits retail regulatory authorities from broadly excluding DERs from participating in regional markets. However, the new rule prohibits regional grid operators from accepting bids from the aggregation of customers of a small utility unless the relevant retail regulatory authority for that utility allows such participation. The final rule also respects retail regulators’ current ability to prohibit retail customers’ demand response from being bid into regional markets by aggregators.

#### Not being blocked either

Campbell 20 (Bruce Campbell, Director of Regulatory Affairs at CPower, expert in regulatory proceedings and market design with 40 years of experience in the electric industry including generating station management and strategic development, an active participant in the stakeholder process of regional grid operators for over 15 years representing generation owners and transmission owners, BS Mechanical Engineering, Bucknell University, “A Primer for Understanding FERC Order 2222,” The Current, 12-18-2020, https://cpowerenergymanagement.com/a-primer-for-understanding-ferc-order-2222/)

Since being issued in September 2020, the Federal Energy Regulatory Commission’s (FERC) Order 2222 has been heralded as a landmark achievement in the history of the energy industry, one that years from now may be seen as a watershed moment when the grid took a giant leap forward in its evolution.

Before we get overwhelmed by hype and possibility, let’s take a minute to examine and clearly explain this order so your organization understands it and can use that knowledge to make an informed, educated decision on your energy use and spend.

When language matters, study the source

Language is important when it comes to interpreting and understanding energy regulations. Let us then examine FERC’s exact words concerning Order 2222 so you understand for yourself what they mean and you don’t get caught up or misled by someone else’s well-meaning and enthusiastic but perhaps not-entirely-accurate explanation of the order.

The following is verbatim from FERC,

“Order No. 2222 will help usher in the electric grid of the future and promote competition in electric markets by removing the barriers preventing distributed energy resources (DERs) from competing on a level playing field in the organized capacity, energy, and ancillary services markets run by regional grid operators.”

Order 2222 exemplifies FERC’s mission: regulate wholesale power markets

One of the Federal Energy Regulatory Commission’s primary responsibilities is to regulate the sale of electricity in the wholesale power markets, which are composed of the organized capacity, energy, and ancillary services markets that are run by the regional grid operators in the US.

To be clear, Order 2222 involves wholesale power markets, which refer to the buying and selling of power between generators and resellers. In contrast, the transaction that occurs when your organization purchases and consumes electricity takes place in the retail power market.

Order 2222 affects the wholesale power markets, NOT the retail markets.

It’s FERC’s responsibility to ensure that the competition in US wholesale power markets is just and reasonable. The markets exist to foster competition and FERC acts as essentially a referee, making sure one entity doesn’t have an unfair advantage over another.

In this respect, Order 2222 is right in the wheelhouse of FERC’s jurisdiction and mission.

Nonetheless, it is important to understand that the interconnection of DERs with the grid remains subject to local utility interconnection rules that are state jurisdictional and that these rules can encourage or discourage DER activity.

DERs are the grid’s future. Order 2222 paves a fair path forward

Until the last few years, most of the electricity entering the wholesale markets in the US originated from large traditional generation sources–coal, oil, or natural gas, for example–and was offered into the market by entities who controlled those sources, which we’ll call traditional electric resources for simplicity’s sake in this examination.

Today, however, distributed energy resources–or DERs as they’re commonly called–have become increasingly popular and have long-sought to enter the wholesale marketplace and compete alongside traditional sources.

Order 2222, as FERC clearly states, seeks to allow DERs to compete on a fair and level playing field in the wholesale power markets.

Order 2222 defines Distributed Energy Resources (for everyone)

Let’s take a moment and consider how FERC defines distributed energy resources, because this is a term that (like many in the energy industry) isn’t necessarily uniform in its definition and can mean different things to different people.

Again this language is verbatim from FERC:

“DERs are small-scale power generation or storage technologies (typically from 1 kW to 10,000 kW) that can provide an alternative to or an enhancement of the traditional electric power system. These can be located on an electric utility’s distribution system, a subsystem of the utility’s distribution system, or behind a customer meter. They may include electric storage, intermittent generation, distributed generation, demand response, energy efficiency, thermal storage or electric vehicles and their charging equipment.”

This text is worth understanding because it formally defines what has previously been nebulous and open to varying interpretations. FERC desires to create a “level playing field.”

The “level playing field” that Order 2222 seeks to create means FERC wants to make sure that assets entering the market as distributed energy resources have equal opportunity to compete against those entering the market as traditional electric resources.

If we look at FERC’s recent history of orders–including 2011’s Order 745 involving demand response resources participating in wholesale markets and 2018’s Order 841, concerning the same of storage resources–we find the Commission has been striving to establish this level playing field between traditional market participants and inevitable new players in the marketplace for some time.

What does Order 2222 do (specifically) for DERs?

At this point in our examination of Order 2222, we know FERC’s objective is to create a playing field that fosters fair competition among market participants.

Let us now take a look at the operative phrase of the order, which instructs regional grid operators to remove barriers preventing distributed energy resources (DERs) from competing on this level playing field.

A good question for us to ask now is what are these “barriers” standing in the way of DERs getting a fair shake in the wholesale markets?

The answer is complicated because the six deregulated energy markets in the US have very different rules for participation. It’s precisely those rules–or more to the point, tariffs–that Order 2222 instructs grid operators to revise, so that–again, in FERC’s words–distributed energy resources are established “as a category of market participant.”

When will we see results from Order 2222?

Back to the horse’s mouth and FERC’s wording: “Order No. 2222 takes effect 60 days after publication in the Federal Register. Grid operators must make compliance filings to FERC within 270 days of publication in the Federal Register.”

Here, we see that at the absolute earliest, the intentions of Order 2222 won’t be fully realized in the marketplace for nearly a year.

If the saga of FERC Order 841 is any indication, it will be some time before grid operators fully comply with Order 2222 and make the necessary adjustments to the tariffs that affect their markets and allow DERs the same access traditional assets have enjoyed.

It’s not unreasonable then to expect grid operators to submit appeals, file extensions (MISO, PJM, SPP, and ISO-NE have already asked for and received extensions), and otherwise take longer than 330+ days to adhere in full to FERC’s order.

On to the Future…

Order 2222 is important because it not only acknowledges the long-held conviction that DERs will play an integral role in the grid of the future, it also guarantees that in the very near future distributed energy resources such as rooftop and community solar, backup generators, fuel cells, demand response, energy storage, microgrids, and energy efficiency will take their place at the adult table in the country’s wholesale power markets.

For now, there are many ways to monetize DERs in US energy markets, especially with demand response, which pays organizations to use less energy when the grid is stressed due to lack of reliability or high electricity prices. Expect those opportunities to increase as Order 2222 is implemented.

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

#### Copper crisis thumps the transition to renewables.

Rystad 22 (Rystad Energy, Independent oil and gas consulting company; “A Copper Crisis Threatens The Energy Transition;” 01-15-22, Oil Price, <https://oilprice.com/Energy/Energy-General/A-Copper-Crisis-Threatens-The-Energy-Transition.html>, TM)

Global demand for copper, an essential component in manufacturing electric vehicles (EVs) and consumer electronics, will outstrip supply by more than six million tonnes by 2030, Rystad Energy projects. A deficit of this magnitude would have wide-reaching ramifications for the energy transition as there is currently no substitute for copper in electrical applications. Significant investment in copper mining is required to avoid the shortfall.

Copper demand is projected to rise 16% by the end of the decade, reaching 25.5 million tonnes per annum (tpa) by 2030, compared with a supply forecast showing a 12% decrease versus 2021 levels. Estimates based on current and expected projects show supply will clock in at 19.1 million tpa, falling well short of the quantity needed to meet demand.

Investment in copper mining is risky as current operations are near peak capacity due to ore quality and reserves exhaustion, exerting upward pressure on production costs and emissions. However, copper prices are currently high, which could encourage investors to accept a greater level of risk.

“Lackluster investments in copper mining are stumping supply, as the pandemic-driven market instability encourages investors to hold on to their capital. As the energy transition continues at pace and EV adoption grows in populous nations like China and India, the copper mining industry requires significant investment to keep up with demand,” says James Ley, global energy metals expert and Senior Vice President with Rystad Energy.

Copper

The growing renewables and EV markets have pushed copper demand higher, causing prices to soar. Prices have risen 70% during the pandemic. The current spike in infection cases, due mainly to the spread of the Omicron variant, is causing further supply chain bottlenecks, leaving prices at all-time highs entering 2022.

The outlook for copper investment paints a bleak picture for future supply, indicating a significant supply deficit could emerge from 2023 onwards. The expected demand increase is due to the market growth of renewables – solar, onshore and offshore wind, among others – EVs, construction and electronics. With India’s projected economic growth and the buildout of EVs from China, the demand projection could end up being conservative and the supply shortfall even more severe.

### 2NC---Impact UQ

#### DERs are rapidly exploding globally now – so are smart and microgrids

Miyazu 1-3-22 (Hina Miyazu, Shibuya Data Count, provides market research reports to various business professionals across different industry verticals, “Distributed Energy Generation Market Size, Demand, Outlook, Trends, Revenue, Future Growth Opportunities,” MarketWatch, 1-3-2022, <https://www.marketwatch.com/press-release/distributed-energy-generation-market-size-demand-outlook-trends-revenue-future-growth-opportunities-2022-01-03#:~:text=%22Global%20Distributed%20Energy%20Generation%20Market,the%20forecast%20period%202020%2D2027>.)

"Global Distributed Energy Generation Market is valued at approximately USD 243 billion in 2019 and is anticipated to grow with a healthy growth rate of more than 11.5% over the forecast period 2020-2027. The distributed energy generation (DEG) is a kind of decentralized system used to produce electricity energy and is served to homes, businesses, and industrial areas. These systems are frequently performed their functions through using technologies, such as solar power and fuel cells. More often, distributed energy generation systems are utilized to offer as substitute or addition to the conventional electric power system, and they deliver small-scale electricity generation (usually in the range of 1 kW to 10,000 kW). Distributed energy can be derived from both renewable and non-renewable sources. Furthermore, the deployment of distributed energy generation system also becomes more significant in many countries, with the legislative package on the new electricity market. For instance, the European Commission's has developed a new legislative policy within the Clean Energy Package. As such, the revised Electricity Regulation, which will enter into force on 1st January 2020, opens up opportunities for electricity wholesale markets to renewables, and energy storage. This, in turn, is expected to accelerate the installation of distributed energy generation system in the region. Moreover, the rise in investments in renewable energy projects and smart grid infrastructure, along with growing government focus on reduction of carbon footprint level and usage of cleaner energy resources are the few factors responsible for the high CAGR of the market during the forecast period. For instance, in 2020, the Korean government planned to invest 11 trillion won (USD 9 billion) in renewable energy projects for the upcoming three years. Whereas, Southeast Asian countries will invest USD 9.8 billion in smart grid infrastructure from 2018 to 2027. This, in turn, is likely to strengthen the demand for distributed energy generation, thereby contributing to the market growth around the world. However, the regulatory issues associated with distinct distributed energy resources is one of the prime the few factors restraining the market growth over the forecast period of 2020-2027.

The regional analysis of the global Distributed Energy Generation market is considered for the key regions such as Asia Pacific, North America, Europe, Latin America, and Rest of the World. Asia-Pacific is the leading/significant region across the world in terms of market share owing to the rising renewable energy generation capacity, along with the growing investment & deployment of smart grid and microgrid in the region. Whereas Asia-Pacific is also anticipated to exhibit the highest growth rate / CAGR over the forecast period 2020-2027. Factors such as the stringent government norms concerning environment safety and emission, coupled with the presence of significant number of market players across the developing nations, such as China and India, are the few factors creating a lucrative opportunity for the growth of the Distributed Energy Generation market in the Asia-Pacific region.

### 2NC---No Climate Impact

#### No climate impact---bad studies and adaption.

Nils P. Gleditsch 21, Research Professor at the Peace Research Institute Oslo, “This time is different! Or is it? NeoMalthusians and environmental optimists in the age of climate change,” Journal of Peace Research, pg. 5-6, 2021, SAGE. clarification denoted with brackets.

The most extreme contrarian position is, of course, to deny one or both key conclusions of the IPCC: the reality of global warming or the human contribution to it. However, most environmental optimists accept these two key conclusions but raise other problems with the panel’s discussion of the social effects of climate change and even more so with popular interpretations of the panel reports. For instance, Hausfather & Peters (2020), by no means ‘climate deniers’, decry the common use of choosing the high-risk [scenario] RCP8.59 to illustrate ‘business as usual’ as misleading.

The causal chains from climate change to the proposed effects on human beings are long and complex, and the uncertainty increases every step of the way. In the literature on the social effects of climate change, including the IPCC reports, statements abound that something ‘may’ lead to something else, or that a variable ‘is sensitive to’ another, without any guidelines for how to translate this into probabilities (Gleditsch & Nordås, 2014: 87f). Uncritical use of the precautionary principle, where any remotely possible calamity unwittingly becomes a probable event, is not helpful.

Gleditsch & Nordås (2014: 85) note that while AR5 (IPCC, 2014) did not find strong evidence for a direct link between climate change and conflict, it argued that climate change is likely to impact known conflict-inducing factors like poverty and inconsistent political institutions and therefore might have an indirect effect on conflict. But this assumes that correlations are transitive, which is not generally the case. If A correlates with B and B with C, we know nothing about how A relates to C unless both correlations are extremely high. The strongest case for the climate–conflict link is the effect of interaction between climate change and factors like poverty, state failure, or ethnic polarization. It may be more cost-effective to try to deal with these other risk factors than with global warming itself if the goal is to reduce the ‘risk multiplier’ effect of climate change on armed conflict.

The articles in this special issue do not generally see scarcity by itself as necessarily resulting in strongly negative outcomes. Factors like development, state failure, and previous overload on ecosystems continue to play an important role in that they interact with climate change to produce conflict and other social outcomes. For instance, Ide, Kristensen & Bartusevicˆius (2021) conclude that the impact of floods on political conflict are contingent on other factors such as population size and regime type. Moreover, most of the articles do not assume that scarcities are likely to arise at the global level. They may be regional (mostly in Africa), national, or local. Urban and rural areas may be affected by different scarcities. Climate change may also affect particularly strongly groups that are already at an economic or political disadvantage. The effects can be alleviated and adaptations constructed at these levels.

The argument about how climate change may indirectly impact conflict leans heavily on the negative economic consequences of climate change, but with little or no reference to the research that explicitly deals with this topic. In fact, the relevant chapter in AR5 concluded that for most sectors of the economy, the impact of climate change was likely to be dwarfed by other factors. Tol (2018) finds that the long-term global economic effects are likely to be negative, but that a century of climate change will have about the same impact on the economy as the loss of one year of economic growth. Other economists are more cautious, but the dean of climate change economics, William Nordhaus (2018: 345, 359), estimates that ‘damages are 2.1 percent of global income at 3C warming and 8.5 percent of income at 6C’, while also warning that the longer the delay in taking decisive action, the harsher the necessary countermeasures. Stern (2006) is more pessimistic, based mainly on a lower discount rate (the interest rate used to calculate the present value of future cash flows) as are Wagner & Weitzman (2015). Heal (2017) argues that the Integrated Assessment Models generally used in the assessment of the economics of climate change are not accurate enough to provide quantitative insights and should not be taken as serious forecasts. Yet, all these economists take the basically optimistic view that climate change is manageable with appropriate policies for raising the price on the emission of greenhouse gases. With a chapter heading from Wagner & Weitzman (2015: 17): ‘We can do this’.

This more optimistic assessment of climate change does not assume that the challenge will go away by itself or can be left to the market. A plausible approach, favored by most economists,10 is the imposition of a robust and increasing price on carbon emissions (whether as a carbon tax or through a cap and trade scheme) high enough to reduce the use of fossil fuels and encourage the search for their replacement. More than 25 countries had such taxes by early 2018 (Metcalf, 2019), but generally not at a level seen as necessary for limiting global warming to, say, 2C. This approach relies on the use of the market mechanism, but with targets fixed by public policy. Income from a carbon tax can be channeled back to the citizens to avoid increasing overall taxation. To speed up the transition, funds can also be allocated to the research and development of cheaper and more efficient production of various forms of fossil-free energy, including nuclear power (Goldstein & Qvist, 2019).

The response of the environmental optimists continues to emphasize the role of innovations; technological innovations, such as improvements in battery technology, the key element in the 2019 Nobel Prize in chemistry,11 but also social innovations, as exemplified by the experimental approach to the alleviation of poverty, rewarded in the same year by the Nobel Prize in economics.12

While the most important countermeasures will be directed at the mitigation of climate change, there is also a strong case for adaptation. If sea-level rise cannot be totally prevented, dikes and flood barriers will be cost-effective and necessary, at least in high-value urban areas. If parts of Africa suffer from drought, there will be increased use for new crops that are more suitable for a dry climate, possibly developed in part by GMO technology. Industrialization in Africa can decrease the one-sided reliance on rain-fed agriculture, as it has in other parts of the world, which have moved human resources from the primary sector to industry (and then to services). Continuing urbanization will move millions out of the most vulnerable communities (Collier, 2010). While structural change failed to produce economic growth in Latin America and Africa after 1990, Africa has experienced a turnaround in the new millennium (McMillan & Rodrik, 2014) and there are also potentials for increasing productivity by structural change within agriculture in Africa (McCullough, 2017).

#### No warming impact and emissions are inevitable

a) Huge uncertainties---climate sensitivity models range from barely any warming to catastrophic with no gauge of certainty

b) Can’t be existential---the worst-case models assume impossible emissions levels with no mitigation or adaptation

c) Timeframe---impacts are slow which allows time to adapt and manage the consequence

d) Renewables worse---fast transition locks in natural gas as a bridge fuel which makes zero emissions impossible OR causes energy shortages because storage tech isn’t ready---that’s Curry.

Judith Curry 19, President of Climate Forecast Applications Network (CFAN), Professor Emerita of Earth and Atmospheric Sciences at the Georgia Institute of Technology, Ph.D. in atmospheric science from the University of Chicago, 2/9/19, “Statement to the Committee on Natural Resources of the United States House of Representatives,” https://curryja.files.wordpress.com/2019/02/curry-testimony-house-natural-resources.pdf

The urgency (?) of CO2 emissions reductions

In the decades since the 1992 UNFCCC Treaty, global CO2 emissions have continued to increase, especially in developing countries. In 2010, the world’s governments agreed that emissions need to be reduced so that global temperature increases are limited to below 2 degrees Celsius.17 The target of 2oC (and increasingly 1.5oC)18 remains the focal point of international climate agreements and negotiations.

The original rationale for the 2oC target is the idea that ‘tipping points’ − abrupt or nonlinear transition to a different climate state − become likely to occur once this threshold has been crossed, with consequences that are largely uncontrollable and beyond our management. The IPCC AR5 considered a number of potential tipping points, including ice sheet collapse, collapse of the Atlantic overturning circulation, and permafrost carbon release. Every single catastrophic scenario considered by the IPCC AR5 (WGII, Table 12.4) has a rating of very unlikely or exceptionally unlikely and/or has low confidence. The only tipping point that the IPCC considers likely in the 21st century is disappearance of Arctic summer sea ice (which is fairly reversible, since sea ice freezes every winter).

In the absence of tipping points on the timescale of the 21st century, the 2oC limit iss more usefully considered by analogy to a highway speed limit:19 driving at 10 mph under the speed limit is not automatically safe, and exceeding the limit by 10 mph is not automatically dangerous, although the faster one travels the greater the danger from an accident. Analogously, the 2oC (or 1.5oC) limit should not be taken literally as a real danger threshold. An analogy for considering the urgency of emissions reductions is your 401K account: if you begin making contributions early, it will be easier to meet your retirement goals.

Nevertheless, the 2oC and 1.5oC limits are used to motivate the urgency of action to reduce CO2 emissions. At a recent UN Climate Summit, (former) Secretary-General Ban Ki-moon warned that: “Without significant cuts in emissions by all countries, and in key sectors, the window of opportunity to stay within less than 2 degrees [of warming] will soon close forever.”20 Actually, this window of opportunity may remain open for quite some time. The implications of the lower values of climate sensitivity found by Lewis and Curry21 and other recent studies is that human caused warming is not expected to exceed the 2oC ‘danger’ level in the 21st century. Further, there is growing evidence that the RCP8.5 scenario for future greenhouse gas concentrations, which drives the largest amount of warming in climate model simulations, is impossibly high, requiring a combination of numerous borderline impossible socioeconomic scenarios.22 A slower rate of warming means there is less urgency to phase out greenhouse gas emissions now, and more time to find ways to decarbonize the economy affordably and with a minimum of unintended consequences. It also allows for the flexibility to revise our policies as further information becomes available.

Is it possible that something truly dangerous and unforeseen could happen to Earth’s climate during the 21st century? Yes it is possible, but natural climate variability (including geologic processes) may be a more likely source of possible undesirable change than manmade warming. In any event, attempting to avoid such a dangerous and unforeseen climate by reducing fossil fuel emissions will be futile if natural climate and geologic processes are dominant factors. Geologic processes are an important factor in the potential instability of the West Antarctic ice sheet that could contribute to substantial sea level rise in the 21st century.23

Under the Paris Agreement, individual countries have submitted to the UNFCCC their Nationally Determined Contributions (NDCs). Under the Obama Administration, the U.S. NDC had a goal of reducing emissions by 28% below 2005 levels by 2025. Apart from considerations of feasibility and cost, it has been estimated24 using the EPA MAGICC model that this commitment will prevent 0.03oC in warming by 2100. When combined with current commitments from other nations, only a small fraction of the projected future warming will be ameliorated by these commitments. If climate models are indeed running too hot,25 then the amount of warming prevented would be even smaller. Even if emissions immediately went to zero and the projections of climate models are to be believed, the impact on the climate would not be noticeable until the 2nd half of the 21st century. Most of the expected benefits to the climate from the UNFCCC emissions reductions policy will be realized in the 22nd century and beyond.

Attempting to use carbon dioxide as a control knob to regulate climate on decadal to century timescales is arguably futile. The UNFCCC emissions reductions policies have brought us to a point between a rock and a hard place, whereby the emissions reduction policy with its extensive costs and questions of feasibility are inadequate for making a meaningful dent in slowing down the expected warming in the 21st century. And the real societal consequences of climate change and extreme weather events (whether caused by manmade climate change or natural variability) remain largely unaddressed.

This is not to say that a transition away from burning fossil fuels doesn’t make sense over the course of the 21st century. People prefer ‘clean’ over ‘dirty’ energy – provided that all other things are equal, such as reliability, security, and economy. However, assuming that current wind and solar technologies are adequate for providing the required amount and density of electric power for an advanced economy is misguided.26

The recent record-breaking cold outbreak in the Midwest is a stark reminder of the challenges of providing a reliable power supply in the face of extreme weather events, where an inadequate power supply not only harms the economy, but jeopardizes lives and public safety. Last week, central Minnesota experienced a natural gas ‘brownout,’ as Xcel Energy advised customers to turn thermostats down to 60 degrees and avoid using hot water.27 Why? Because the wind wasn’t blowing during an exceptionally cold period. Utilities pair natural gas plants with wind farms, where the gas plants can be ramped up and down quickly when the wind isn’t blowing. With bitter cold temperatures and no wind, there wasn’t enough natural gas.

A transition to an electric power system driven solely by wind and solar would require a massive amount of energy storage. While energy storage technologies are advancing, massive deployment of cost-effective energy storage technologies is well beyond current capabilities.28 An unintended consequence of rapid deployment of wind and solar energy farms may be that natural gas power plants become increasingly entrenched in the power supply system.

Apart from energy policy, there are a number of land use practices related to croplands, grazing lands, forests and wetlands that could increase the natural sequestration of carbon and have ancillary economic and ecosystem benefits.29 These co-benefits include improved biodiversity, soil quality, agricultural productivity and wildfire behavior modification.

In evaluating the urgency of CO2 emissions reductions, we need to be realistic about what reducing emissions will actually accomplish. Drastic reductions of emissions in the U.S. will not reduce global CO2 concentrations if emissions in the developing world, particularly China and India, continue to increase. If we believe the climate model simulations, we would not expect to see any changes in extreme weather/climate events until late in the 21st century. The greatest impacts will be felt in the 22nd century and beyond, in terms of reducing sea level rise and ocean acidification.

Resilience, anti-fragility and thrivability

Given that emissions reductions policies are very costly, politically contentious and are not expected to change the climate in a meaningful way in the 21st century, adaptation strategies are receiving increasing attention in formulating responses to climate change.

The extreme damages from recent hurricanes plus the recent billion dollar disasters from floods, droughts and wildfires, emphasize that the U.S. is highly vulnerable to current weather and climate disasters. Even worse disasters were encountered in the U.S. during the 1930’s and 1950’s. Possible scenarios of incremental worsening of weather and climate extremes over the course of the 21st century don’t change the fundamental storyline that many regions of the U.S. are not well adapted to the current weather and climate variability, let alone the range that has been experienced over the past two centuries.

As a practical matter, adaptation has been driven by local crises associated with extreme weather and climate events, emphasizing the role of ‘surprises’ in shaping responses. Advocates of adaptation to climate change are not arguing for simply responding to events and changes after they occur; they are arguing for anticipatory adaptation. However, in adapting to climate change, we need to acknowledge that we cannot know how the climate will evolve in the 21st century, we are certain to be surprised and we will make mistakes along the way.

‘Resilience’ is the ability to ‘bounce back’ in the face of unexpected events. Resilience carries a connotation of returning to the original state as quickly as possible. The difference in impact and recovery from Hurricane Sandy striking New York City in 2012 versus the impact of Tropical Cyclone Nargis striking Myanmar in 200830 reflects very different vulnerabilities and capacities for bouncing back.

To increase our resilience to extreme weather and climate events, we can ‘bounce forward’ to reduce future vulnerability by evolving our infrastructures, institutions and practices. Nicholas Taleb’s concept of antifragility31 focuses on learning from adversity, and developing approaches that enable us to thrive from high levels of volatility, particularly unexpected extreme events. Anti-fragility goes beyond ‘bouncing back’ to becoming even better as a result of encountering and overcoming challenges. Anti-fragile systems are dynamic rather than static, thriving and growing in new directions rather than simply maintaining the status quo.

Strategies to increase antifragility include: economic development, reducing the downside from volatility, developing a range of options, tinkering with small experiments, and developing and testing transformative ideas. Antifragility is consistent with decentralized models of policy innovation that create flexibility and redundance in the face of volatility. This ‘innovation dividend’ is analogous to biodiversity in the natural world, enhancing resilience in the face of future shocks.32

Similar to anti-fragility, the concept of ‘thrivability’ has been articulated by Jean Russell:33 “It isn’t enough to repair the damage our progress has brought. It is also not enough to manage our risks and be more shock-resistant. Now is not only the time to course correct and be more resilient. It is a time to imagine what we can generate for the world. Not only can we work to minimize our footprint but we can also create positive handprints. It is time to strive for a world that thrives.”

A focus on policies that support resilience, anti-fragility and thrivability avoids the hubris of thinking we can predict the future climate. The relevant questions then become:

• How can we best promote the development of transformative ideas and technologies?

• How much resilience can we afford?

The threats from climate change (whether natural or human caused) are fundamentally regional, associated not only with regional changes to the weather/climate, but with local vulnerabilities and cultural values and perceptions. In the least developed countries, energy poverty and survivability is of overwhelming concern, where there are severe challenges to meeting basic needs and their idea of clean energy is something other than burning dung inside their dwelling for cooking and heating. In many less developed countries, particularly in South Asia, an overwhelming concern is vulnerability to extreme weather events such as floods and hurricanes that can set back the local economies for a generation. In the developed world, countries are relatively less vulnerable to climate change and extreme weather events and have the luxury of experimenting with new ideas: entrepreneurs not only want to make money, but also to strive for greatness and transform the infrastructure for society.

Extreme weather/climate events such as landfalling major hurricanes, floods, extreme heat waves and droughts become catastrophes through a combination of large populations, large and exposed infrastructure in vulnerable locations, and human modification of natural systems that can provide a natural safety barrier (e.g. deforestation, draining wetlands). Addressing current adaptive deficits and planning for climate compatible development will increase societal resilience to future extreme events that may possibly be more frequent or severe in the future.

Ways forward

Climate scientists have made a forceful argument for a future threat from manmade climate change. Based upon our current assessment of the science, the threat does not seem to be an existential one on the time scale of the 21st century, even in its most alarming incarnation. However, the perception of manmade climate change as a near-term apocalypse and alignment with range of other social objectives has narrowed the policy options that we’re willing to consider.

### 2NC---No Climate Wars

#### Warming won’t cause global conflict

Dr. Ian Cook 20, Senior Lecturer in Global Politics and Policy at Murdoch University, PhD in Political Theory from the University of Queensland, The Politics of the Final Hundred Years of Humanity (2030-2130), Springer Singapore, Kindle Edition

Yet another problem with the assumption that catastrophic human-caused environment change simply causes civil war, as Salehyan and Hendrix noted, is that violence at the scale of a civil war requires significant resources. In their view, civil wars are more likely to occur in times of relative abundance. While “riots and protests, may emerge from conditions of scarcity,” they argue, “sustaining a militant organization requires considerable planning and resources” (Salehyan and Hendrix 2014, p. 240). Reasons to fight might exist. For this to turn into civil war, however, people “also need the capability to do so, and environmental scarcity may limit such capability, thus undermining the resource base necessary for mobilizing armed violence” (Salehyan and Hendrix 2014, p. 240).

A related debate concerns what Adams and colleagues have claimed to be a sampling bias in studies of the connection between environment change and armed conflict (Adams et al. 2018). Levy accepts the existence of some sampling bias but rejects the view that this bias results in an overstatement of the connection between environment change and conflict. “Knowing that case selection is biased is useful, but not a reason to lower our estimate of the climate’s impact on conflict” (Levy 2018, p. 441).

In responding to Levy’s criticism, authors claiming bias wrote that they did not “deny a link between climate change and conflict in principal. Indeed, some of our own recent work indicates that such a link exists, but it is highly conditional.” Their problem with the research being done in this field was that “sampling biases… increase the risk that such links are overstated, that crucial world regions do not receive sufficient attention and that little knowledge is produced on peaceful adaptation” (Ide et al. 2018, p. 442– 3).

After reviewing the literature on the relationship between climate change and violent conflict, Sakaguchi, Varughese and Auld concluded that the “current literature offers mixed evidence. This makes it difficult to render a definitive statement about the climate-conflict relationship” (2017, p. 640). While they pointed out that just over 60% of the studies they reviewed found “that climate change variables are positively correlated with higher levels of violent conflict,” Sakaguchi, Varughese and Auld also argued that “many subtleties and countertrends underlie this overall pattern” (2017, p. 640). Thus, even though “a majority of reviewed studies envision climate variables influencing conflict through a causal pathway, … these pathways are often theoretically underspecified and have only weak empirical support” (Sakaguchi et al. 2017, p. 641).

As Koubi put it, the research that has been done on this question “provides some evidence that climatic changes could act as a ‘threat multiplier’ in several of the world’s regions. In particular, the extant literature shows that climatic conditions can lead to conflict in agricultural-dependent regions and in combination and interaction with other socioeconomic and political factors” (Koubi 2018, p. 200). After having claimed that, to their knowledge, “no one in the field of climate research has suggested that climate change could be the ‘sole cause’ of war, violence, unrest or migration”, Butler and Kefford recommended “viewing climate change instead as a risk multiplier, influencer or co-factor … In this way of thinking, environmental and ecological factors interact with social determinants, including those that are economic, demographic and political, to produce phenomena such as migration, conflict and famine” (2018, p. 587).

There can be no doubt that conflict will increase during the final hundred years of humanity. But it will result from a complex interaction of socio-political factors and a catastrophically changed environment. It may not go beyond conflict between different groups or between the government and opposition groups and become civil war. This depends on the capacity of those opposition groups. In many cases, they will lack the resources to conduct a civil war. The Syrian war is itself a good illustration of the problem, as the groups opposed to the Syrian government have only been able to conduct the extended civil war in which they have been engaged with the support of outside groups. (Mazzetti and Apuzzo 2016).

The question of whether civil war will break out is something that can only be answered “region by region” and the answer must be based on “knowledge of pre-conflict geographies, such as drivers of resilience and vulnerability” (Farbotko 2018). Sometimes governments may abandon territory and opposition groups can seize control of that land. But it is likely to be land that is suffering worst from the effects of catastrophic human-caused environment change and will not be habitable. To replace an existing government or take control of a region within a country through civil war is no simple thing. It may happen. But it will not happen on the scale that some people have predicted. And it will not happen just because of the weather.

#### No climate wars OR extinction

Michael Shellenberger 20, Founder and President of Environmental Progress and Co-Founder of the Breakthrough Institute, “Why I Believe Climate Change Is Not the End of the World”, Quillette, 7/8/2020, https://quillette.com/2020/07/08/why-i-believe-climate-change-is-not-the-end-of-the-world/

What the IPCC had actually written in its 2018 report and press release was that in order to have a good chance of limiting warming to 1.5 degrees Celsius from preindustrial times, carbon emissions needed to decline 45 percent by 2030. The IPCC did not say the world would end, nor that civilization would collapse, if temperatures rose above 1.5 degrees Celsius.

Scientists had a similarly negative reaction to the extreme claims made by Extinction Rebellion. Stanford University atmospheric scientist Ken Caldeira, one of the first scientists to raise the alarm about ocean acidification, stressed that “while many species are threatened with extinction, climate change does not threaten human extinction.” MIT climate scientist Kerry Emanuel told me, “I don’t have much patience for the apocalypse criers. I don’t think it’s helpful to describe it as an apocalypse.”

An AOC spokesperson told Axios, “We can quibble about the phraseology, whether it’s existential or cataclysmic.” But, he added, “We’re seeing lots of [climate change–related] problems that are already impacting lives.”

But if that’s the case, the impact is dwarfed by the 92 percent decline in the decadal death toll from natural disasters since its peak in the 1920s. In that decade, 5.4 million people died from natural disasters. In the 2010s, just 0.4 million did. Moreover, that decline occurred during a period when the global population nearly quadrupled.

In fact, both rich and poor societies have become far less vulnerable to extreme weather events in recent decades. In 2019, the journal Global En­vironmental Change published a major study that found death rates and economic damage dropped by 80 to 90 percent during the last four decades, from the 1980s to the present.

While global sea levels rose 7.5 inches (0.19 meters) between 1901 and 2010, the IPCC estimates sea levels will rise as much as 2.2 feet (0.66 meters) by 2100 in its medium scenario, and by 2.7 feet (0.83 meters) in its high-end scenario. Even if these predictions prove to be significant underestimates, the slow pace of sea level rise will likely allow societies ample time for adaptation.

We have good examples of successful adaptation to sea level rise. The Netherlands, for instance, became a wealthy nation despite having one-third of its landmass below sea level, including areas a full seven meters below sea level, as a result of the gradual sinking of its landscapes.

And today, our capability for modifying environments is far greater than ever before. Dutch experts today are already working with the government of Bangladesh to prepare for rising sea levels.

What about fires? Dr. Jon Keeley, a US Geological Survey scientist in California who has researched the topic for 40 years, told me, “We’ve looked at the history of climate and fire throughout the whole state, and through much of the state, particularly the western half of the state, we don’t see any relationship between past climates and the amount of area burned in any given year.”

In 2017, Keeley and a team of scientists modeled 37 different regions across the United States and found that “humans may not only influence fire regimes but their presence can actually override, or swamp out, the effects of climate.” Keeley’s team found that the only statistically significant factors for the frequency and severity of fires on an annual basis were population and proximity to development.

As for the Amazon, the New York Times reported, correctly, that “[the 2019] fires were not caused by climate change.”

In early 2020, scientists challenged the notion that rising carbon dioxide levels in the ocean were making coral reef fish species oblivious to predators. The seven scientists who published their study in the journal Nature had, three years earlier, raised questions about the marine biologist who had made such claims in the journal Science in 2016. After an investigation, James Cook University in Australia concluded that the biologist had fabricated her data.

When it comes to food production, the Food and Agriculture Organization of the United Nations (FAO) concludes that crop yields will increase significantly, under a wide range of climate change scenarios. Humans today produce enough food for ten billion people, a 25 percent surplus, and experts believe we will produce even more despite climate change.

Food production, the FAO finds, will depend more on access to tractors, irrigation, and fertilizer than on climate change, just as it did in the last century. The FAO projects that even farmers in the poorest regions today, like sub-Saharan Africa, may see 40 percent crop yield increases from technological improvements alone.

In its fourth assessment report, the IPCC projected that by 2100, the global economy would be three to six times larger than it is today, and that the costs of adapting to a high (4 degrees Celsius) temperature rise would reduce gross domestic product (GDP) just 4.5 percent.

Does any of that really sound like the end of the world?

The apocalypse now

Anyone interested in seeing the end of the world up close and in person could do little worse than to visit the Democratic Republic of the Congo in central Africa. The Congo has a way of putting first-world prophecies of climate apocalypse into perspective. I traveled there in December 2014 to study the impact of widespread wood fuel use on people and wildlife, particularly on the fabled mountain gorillas.

Within minutes of crossing from the neighboring country of Rwanda into the Congolese city of Goma, I was taken aback by the extreme poverty and chaos: children as young as two years old perched on the handlebars of motorcycles flying past us on roads pockmarked with giant potholes; tin-roofed shanties as homes; people crammed like prisoners into tiny buses with bars over the windows; trash everywhere; giant mounds of cooled lava on the sides of the road, reminders of the volcanic anger just beneath the Earth’s surface.

In the 1990s and again in the early 2000s, Congo was the epicenter of the Great African War, the deadliest conflict since World War II, which involved nine African countries and resulted in the deaths of three to five million people, mostly because of disease and starvation. Another two million people were displaced from their homes or sought asylum in neighboring countries. Hundreds of thousands of people, women, and men, adults, and children, were raped, sometimes more than once, by different armed groups.

During our time in the Congo, armed militias roaming the countryside had been killing villagers, including children, with machetes. Some blamed Al-Shabaab terrorists coming in from Uganda, but nobody took credit for the attacks. The violence appeared unconnected to any military or strategic objective. The national military, police, and United Nations Peacekeeping Forces, about 6,000 soldiers, were either unable or unwilling to do anything about the terrorist attacks.

“Do not travel,” the United States Department of State said, bluntly, of the Congo on its website. “Violent crime, such as armed robbery, armed home invasion, and assault, while rare compared to petty crime, is not uncommon, and local police lack the resources to respond effectively to serious crime. Assailants may pose as police or security agents.”

One reason I felt safe traveling to the eastern Congo and bringing my wife, Helen, was that the actor Ben Affleck had visited several times and even started a charity there to support economic development. If the eastern Congo was safe enough for a Hollywood celebrity, I reasoned, it would be safe enough for Helen and me.

To make sure, I hired Affleck’s guide, translator, and “fixer,” Caleb Kabanda, a Congolese man with a reputation for keeping his clients safe. We spoke on the telephone before I arrived. I told Caleb I wanted to study the relationship between energy scarcity and conservation. Referring to the North Kivu province capital of Goma, the sixth most populated city in the Congo, Caleb asked, “Can you imagine a city of nearly two million people relying on wood for energy? It’s crazy!”

Ninety-eight percent of people in eastern Congo rely on wood and charcoal as their primary energy for cooking. In the Congo as a whole, nine out of 10 of its nearly 92 million people do, while just one out of five has any access to electricity. The entire country relies on just 1,500 megawatts of electricity, which is about as much as a city of one million requires in developed nations.

The main road Caleb and I used to travel from Goma to the communities around Virunga Park had recently been paved, but there was little else in the way of infrastructure. Most roads were dirt roads. When it rained, both the paved and unpaved roads and the surrounding homes were flooded because there was no flood control system. I was reminded of how much we take for granted in developed nations. We practically forget that the gutters, canals, and culverts, which capture and divert water away from our homes, even exist.

Is climate change playing a role in Congo’s ongoing instability? If it is, it’s outweighed by other factors. Climate change, noted a large team of researchers in 2019, “has affected organized armed conflict within countries. However, other drivers, such as low socioeconomic development and low capabilities of the state, are judged to be substantially more influential.”

There is only a barely functioning government in the Congo. When it comes to security and development, people are mostly on their own. Depending on the season, farmers suffer too much rain or not enough. Recently, there has been flooding once every two or three years. Floods regularly destroy homes and farms.

Researchers with the Peace Research Institute Oslo note, “Demographic and environmental variables have a very moderate effect on the risk of civil conflict.” The IPCC agrees. “There is robust evidence of disasters displacing people worldwide, but limited evidence that climate change or sea-level rise is the direct cause.”

Lack of infrastructure plus scarcity of clean water brings disease. As a result, Congo suffers some of the highest rates of cholera, malaria, yellow fever, and other preventable diseases in the world.

“Lower levels of GDP are the most important predictor of armed conflict,” write the Oslo researchers, who add, “Our results show that resource scarcity affects the risk of conflict less in low-income states than in wealthier states.”

If resources determined a nation’s fate, then resource-scarce Japan would be poor and at war while the Congo would be rich and at peace. Congo is astonishingly rich when it comes to its lands, minerals, forests, oil, and gas.

There are many reasons why the Congo is so dysfunctional. It is massive—it is the second largest African nation in area, behind only Algeria—and difficult to govern as a single country. It was colonized by the Belgians, who fled the country in the early 1960s without establishing strong government institutions, like an independent judiciary and a military.

Is it overpopulated? The population of Eastern Congo has doubled since the 1950s and 1960s. But the main factor is technological: the same area could produce much more food and support many more people if there were roads, fertilizers, and tractors.

The Congo is a victim of geography, colonialism, and terrible post-colonial governments. Its economy grew from $7.4 billion in 2001 to $38 billion in 2017, but the annual per capita income of $561 is one of the lowest in the world, leading many to conclude that much of the money that should flow to the people is being stolen.

For the last 20 years, the Rwandan government has been taking minerals from its neighbor and exporting them as its own. To protect and obscure its activities, Rwanda has financed and overseen the low-intensity conflict in Eastern Congo, according to experts.

There were free elections in 2006 and optimism around the new president, Joseph Kabila, but he proved as corrupt as past leaders. After being re-elected in 2011, he stayed in power until 2018, when he installed a candidate who won just 19 percent of the vote as compared to the opposition candidate, who won 59 percent. As such, Kabila and his allies in the legislature appear to be governing behind the scenes.

Low levels of GDP, not climate change, are correlated with armed conflict, such as in the Congo

Billions won’t die

## Adv---Econ

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

#### Two issues:

#### 1. 1AC Pan says the US cannot get enough power online to incentivize crypto miners to come to the US.

1AC Pan 21 [David, “Banished Chinese Bitcoin Miners Look to the West, and Far Beyond”. 8/2/21. https://www.coindesk.com/business/2021/08/02/banished-chinese-bitcoin-miners-look-to-the-west-and-far-beyond/]

““I know the U.S. right now has a lot of energy available, which can be capitalized on, and some of the biggest energy production innovators would want to soak up the capacity,” Hansen said. “But the fact of the matter is they may just not be able to get enough power online to take up as much as they would like, and that’s going to lead these Chinese miners to end up in other places.”

#### They cannot reverse causally solve this because the plan does not increase the output of energy from utility companies. Only stops them from charging unaffordable prices. We’re (go) GREEN.

1AC Vaheesan 19 [Sandeep Vaheesan is legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans. Paula Bliss, of counsel, Bernheim Kelley Battista & Bliss, MARK A. GOTTLIEB Counsel of Record PUBLIC HEALTH ADVOCACY INSTITUTE, PNE Energy Supply LLC, On Behalf Of Themselves And Others Similarly Situated V. Eversource Energy And Avangrid, Inc. Motion Of Open Markets Institute For Leave To File Amicus Curiae Brief In Support Of Plaintiff-Appellant. 10/25/19, https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678\_Documents-as-filed.pdf]

As these legislative and regulatory decisions have lifted traditional price controls, participants in the wellhead gas, gas resale, and wholesale electricity markets exercise discretion that they previously did not have. Competition in wellstructured markets constrains this private discretion and can ensure the availability of plentiful and affordable gas and electricity. When markets are concentrated or when market participants engage in collusive, exclusionary, or other unfair practices, however, this private discretion becomes private power. Under these circumstances, sellers can use their unilateral or collective market power to profit at the expense of purchasers of gas and electricity.

#### 2. Laundry list of alt causes. We’re green.

Pan 21 [David, “Banished Chinese Bitcoin Miners Look to the West, and Far Beyond”. 8/2/21. https://www.coindesk.com/business/2021/08/02/banished-chinese-bitcoin-miners-look-to-the-west-and-far-beyond/]

China’s crackdown on crypto mining has sent local miners on a global hunt for places to host their machines. Despite reports of North America luring miners, so far there is no clear winner.

Factors like lead times to build out hosting sites, energy and labor costs, tax regimes, climate and political and business environments are among many local issues that make it difficult for miners to map out a specific route of migration, industry pros said.

While North America is one major destination, Central Asia, Latin America and Europe may be even more serious contenders in the future. Some in the crypto industry will likely welcome this development because it indicates a more decentralized distribution of hash power around the world and potentially assuages fears of Chinese miners having an outsized influence on the Bitcoin network.

Around 25% of the hashrate that came offline because of China’s crackdown since March will eventually end up in North America, with another 25% going to central Asian countries such as Kazakhstan, Mongolia and parts of Russia, according to estimates by Nick Hansen, CEO of Seattle-based crypto mining firm Luxor.

Another 15% of hashrate would go to Latin America, 10% could migrate to European Union countries and the rest might never come back online because some of the older mining machines are stranded in China, Hasen said.

The exact route of the Chinese miners’ migration is still not clear. Hansen’s estimates are in part based on his conversations with miners and a data-based analysis on who has access to suitable power sources and infrastructure to get the miners online in the next six to 12 months.

“I know the U.S. right now has a lot of energy available, which can be capitalized on, and some of the biggest energy production innovators would want to soak up the capacity,” Hansen said. “But the fact of the matter is they may just not be able to get enough power online to take up as much as they would like, and that’s going to lead these Chinese miners to end up in other places.”

Central Asia

Lower costs of energy, labor, transportation, tariffs and taxation in central Asia and certain eastern European countries are the main reasons some Chinese miners would choose these regions over North America, said Arthur Lee, CEO of Beijing-based clean-energy mining firm SAI.

“We think Asia has great potential and it is very strategically important to us,” Lee said. The Bitmain-backed firm plans to reach a fairly big scope in Asia, or even become the first or second largest in the region for the second half of this year, according to Lee.

The electricity price in central Asia averages at $0.05 per kWh (kilowatt hour) including taxes and other related costs. While mining farms in Texas are within a similar range, other states in the U.S. could have higher prices, said Franky Hu, chief business development officer at MYRIG, a leading mining infrastructure provider in Kazakhstan and Russia.

Lower energy cost is one of the major factors in determining a miner’s profit margin and how long they can take before covering the cost of their mining machines. An energy cost of $0.05 per kWh can give miners a fairly wide margin given bitcoin’s recent market prices.

Besides generally cheaper energy, low maintenance cost is another advantage for miners in central Asia.

“Specialized workers are more expensive in the U.S than Russia and Kazakhstan,” Hu said. “Due to the high labor cost to maintain and repair the machines, many miners in the U.S. would just leave the broken machines.”

According to Hu, the depreciation rate of mining rigs ranges from 1% to 5% on a monthly basis depending on local weather conditions. Texas generally has a hot and humid climate, which could cause more issues for mining machines.

The U.S. comes with other costs as well. The 25% tariffs on Chinese imports, including electronic components, from the Donald Trump era remain intact under Joe Biden’s administration. The Internal Revenue Service (IRS) taxes crypto generated through mining the same way it taxes income, which ranges from 10% to 37% depending on the state, according to the agency’s guidance on crypto mining taxes.

More expensive building materials and a stricter electrical code, the standard for the safe installation of electric wiring and equipment, for the hosting sites in North America could also make crypto mining more costly in the region, said Kevin Zhang, vice president of mining firm Foundry. (Foundry is a subsidiary of Digital Currency Group, which is also CoinDesk’s parent company.)

Cost can still be an issue even in crypto mining-friendly states with rich energy sources.

“We have looked at both Kentucky and Wyoming and, unfortunately, we have not seen the power and the energy cost at the point where we feel comfortable about it,” said Dave Perrill, CEO and founder of Minneapolis-based miner hosting services provider Compute North.

“I think we are one of the low-cost providers in the industry. We are very thoughtful and strategic and very picky in regards to where we source and how we source our energy. Just the tax ramifications alone wouldn’t foot the calculus in its favor,” Perrill said.

While Kazakhstan, one of the largest bitcoin (BTC, -1.26%) mining hubs in central Asia, recently ended financial incentives meant to attract bitcoin miners and imposed a tax on electricity used by mining operations, Lee said it is very unlikely miners can reduce their cost in North America to be as low as it is in central Asia.

### 2NC---AT: Kazakhstan !

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

**Alt causes to Russia/china war**

Dr. Matthew **Kroenig 20**, Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University, Deputy Director of the Scowcroft Center for Strategy and Security at the Atlantic Council, “The United States Should Not Align With Russia Against China”, Foreign Policy, 5/13/2020, https://foreignpolicy.com/2020/05/13/united-states-should-not-align-russia-against-china-geopolitical-rivalry-authoritarian-partnership/

Now these revisionist autocratic powers are once again working together closely. In response, many national security strategists have argued that the **U**nited **S**tates should seek to **peel them apart** by **working with Russia** to counter the even bigger threat of China. But this recommendation is **misguided**. Autocracies like China and Russia will not form a deep strategic partnership, and the costs of cozying up to Russia far outweigh the benefits. Fortunately, there is a better path: Washington can leverage its democratic advantages, working with its existing democratic allies to counter both Beijing and Moscow at the same time. The growing Russian and Chinese strategic relationship is worrying. The two autocratic powers have cooperated on major energy deals, including a blockbuster $55 billion arrangement to pipe Siberian natural gas into China. Russian President Vladimir Putin and Chinese President Xi Jinping have met in several high-level summits, and Xi even declared Putin “his best friend and colleague.” Perhaps most troubling, Beijing and Moscow have participated in joint military exercises in both Europe and Asia. If they were to coordinate and conduct simultaneous military attacks on the U.S. alliance system in Eastern Europe and the Indo-Pacific, for example, the United States and its allies could be overwhelmed. These facts have led many observers to conclude that the solution is to play them off against each other. Just as President Richard Nixon opened to China to work against Moscow during the Cold War, they argue, today Washington could do the reverse. China is the bigger threat now, so the United States could partner with Russia against the rising power in East Asia. Former U.S. Secretary of State Henry Kissinger has reportedly urged this course of action directly in conversations with President Donald Trump, and Robert Blackwill of the Council on Foreign Relations—a former U.S. ambassador to India—has recommended that Washington “make concessions in order to improve its **relation**ship with Moscow” as part of a strategy to counter China. And these and similar options are being considered in the working levels of the U.S. government. But Russia and China will **not** form an effective alliance against the **U**nited **S**tates anytime soon. In a new book, I examined the strengths and weaknesses of democracies and autocracies in great-power competition and found that autocracies are **poor alliance builders**. The ease with which **unconstrained** dictators **rapidly shift** their country’s **policies**, backtrack on commitments, and **dissemble** are **not** traits that are **conducive** to building international partnerships. Indeed, **history shows** that autocratic allies tend to **fight** each other more than the enemy. In spite of the Molotov-Ribbentrop Pact, Adolf **Hitler** turned on and invaded the Soviet Union, betraying his partner Joseph Stalin. The major military action of the **Warsaw Pact** during the Cold War was attacking its own members, Hungary and Czechoslovakia. The last time China and Russia were aligned, they nearly fought a nuclear war with each other in the 1969 Sino-Soviet border conflict. And Putin invaded **Ukraine** and **Georgia** at a time when these countries were involved in the Russian-led Commonwealth of Independent States. Moreover, there are **many conflicts of interest** between Russia and China that will push them apart **without any help** from the **U**nited **S**tates. Depopulation in **R**ussia’s **F**ar **E**ast has led to fears that an expanding China will attempt a land grab. Russian colleagues report that Russia’s new nuclear-armed intermediate-range missiles are not aimed at NATO but meant to deter a rising China. More broadly, Moscow was the senior partner during the Cold War, and Putin will **not be keen** to now play **second fiddle** to Beijing.

### 2NC---UQ

#### Fed is confident they can manage it

Martin & Leonard 12/9. Eric Martin and Jenny Leonard. Writers at Bloomberg Magazine. "Biden’s commerce chief ‘confident’ inflation will be short-lived." Al Jazeera, December 9, 2021. https://www.aljazeera.com/economy/2021/12/9/bidens-commerce-chief-confident-inflation-will-be-short-lived

President Joe Biden’s administration remains “quite confident” that the fastest inflation in decades will be short-lived and abate once pandemic-fueled supply-chain and labor-market disruptions ease, according to one of his top economic officials.

The rising cost of living is a problem affecting Americans in their daily lives, particularly around the holidays as they pay higher prices for Thanksgiving turkeys and Christmas trees, and Biden understands the impact, Commerce Secretary Gina Raimondo said in an interview Thursday.

Biden’s administration also has the solutions, she said. They include expanding the labor market through job training; vaccinating more people against Covid-19 so that they can return to work; increasing employment of women through the Build Back Better Act’s expansion of child care and early childhood education; and investing in American semiconductor manufacturing and ports to address shortages of goods.

#### Inflation rates peaking now

Franck 22 Thomas Franck Economic Policy Reporter. JAN 12 2022. “Biden says inflation report shows progress in slowing down runaway prices.” <https://www.cnbc.com/2022/01/12/biden-says-cpi-inflation-report-shows-progress-in-slowing-down-high-prices.html> {DK}

President Joe Biden on Wednesday touted the new consumer inflation report as evidence that price jumps have started to slow, but acknowledged that the economy has a ways to go before Americans see cost hikes return to a typical level.

“Today’s report—which shows a meaningful reduction in headline inflation over last month, with gas prices and food prices falling—demonstrates that we are making progress in slowing the rate of price increases,” the president said in a prepared statement.

“At the same time, this report underscores that we still have more work to do,” he added, “with price increases still too high and squeezing family budgets.”

The president’s remarks came hours after the Labor Department said that Americans paid 0.5% more for goods and services in December. That increase put the year-over-year inflation jump at a whopping 7%, the hottest 12-month price gain since 1982.

CPI data shows inflation rose 7% year over year, its highest increase since 1982

But Biden’s remarks highlight what many economists see as evidence that inflation increases appear to be peaking. Prices rose 0.3% in August, 0.4% in September, 0.9% in October, 0.8% in November and 0.5% in December, according to the Labor Department.

Should that trend continue, the lofty year-over-year jumps would ease.

While this downtrend does not suggest that prices are declining, it does indicate that the rate of price increases is falling. That would start the process by which year-over-year inflation would recede back to the Federal Reserve’s 2% target.

#### Inflation is peaking and will fall – their ev is based on faulty projections

Reynolds 22 Alan Reynolds is one of the original supply-side economists. He is Senior Fellow at the Cato Institute and was formerly Director of Economic Research at the Hudson Institute. American Institute of Economic Research. “Inflation In Oil Prices Will Soon Slow To Zero.” Jan. 11, 2022. <https://seekingalpha.com/article/4479142-inflation-in-oil-prices-will-soon-slow-to-zero> {DK}

Monthly reports about inflation are too often uncritically expressed on a year-to-year basis, such as the percentage change in the consumer price index from November 2020 to November 2021. Relying on year-to-year percentage increases to describe or predict trends in inflation is frequently misleading, however, for reasons I previously enumerated [here](https://www.cato.org/blog/perennial-year-year-oil-price-confusion-5), [here,](https://www.cato.org/blog/producer-prices-goods-rise-fall-oil-prices) [here,](https://www.cato.org/blog/unlike-next-month-november-cpi-was-dominated-oil-1) and [here](https://www.cato.org/blog/curious-tale-ppi-trade-service-inflation-0). In the third quarter of 2021, year-to-year changes made it appear as if inflation was speeding up when it was slowing down.

Trying to predict the future by gazing in the rear-view mirror at previous year-to-year monthly changes will invite the opposite confusion in 2022, by creating a false expectation that the largest one-time price changes between 2020 and 2021 may continue into 2022.

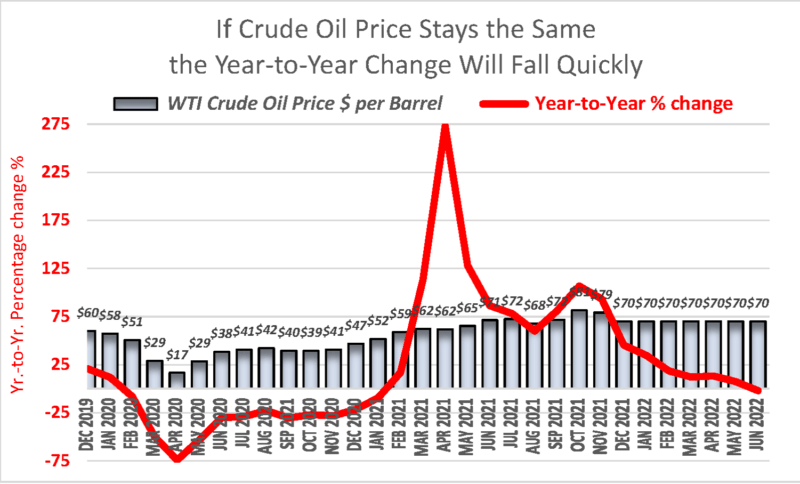
In November 2021, the two most noticeable 12-month increases in the consumer price index (CPI) were the 33.3% increase in the price of energy and the 31.4% increase in the price of used cars. By the summer of 2022, the year-to-year increases in prices of energy and used cars will be near zero, if not below zero.

The reopening of world economies in the Spring of 2021 made year-to-year price changes inflate price trends because changes were measured against flat or falling prices during global lockdown months. But demand and prices recovered when restrictions on commerce and transportation were largely ended by February 2021.

By the Spring of 2022, the confusing habit of describing monthly inflation by year-to-year percentage changes will begin to push in the opposite direction. Prices that are rising at the same rate as before will appear to be slowing rapidly on a year-to-year basis. Prices that are not changing at all will be seen as falling toward zero or less.

The first graph provides a straightforward way to illustrate these anomalies by examining one pivotal price that affects many others - the price of crude oil -by showing what would happen to monthly year-to-year percentage changes if crude oil remains near $75 (well above the 2021 median of $69).

From April 2020 to April 2021, the spot price of a barrel of West Texas Intermediate (WTI) crude oil rose by 273% to $61.70 in April 2021. That was not because $61.70 was unusually high (it was higher in April 2019; $63.80), but because the $16.55 price of April 2020 was so deflated that [U.S. crude oil production](https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=WCRFPUS2&f=4) collapsed from 13 million barrels a day in March 2020 to 10.45 million in September 2021, before partly recovering to 11.65 million near year-end.



With U.S. oil supply falling and world demand rising as economies reopened, the average price of regular gasoline (which had fallen [from $2.88 a gallon in April 2019 to $1.72 in April 2020](https://www.statista.com/statistics/204133/retail-prices-of-motor-fuel-in-the-united-states-since-2009/)) quickly recovered to $2.72 in April 2021. The gasoline price was widely reported as 58% "inflation" although gasoline was cheaper than in April 2019.

By October 2021, the price of WTI crude peaked at $81.48, though the year-over-year change *slowed* to 107%. The price then settled down to $70 during the first 20 days of December. On December 21, the [Energy Information Agency](https://www.eia.gov/outlooks/steo/archives/dec21.pdf) predicted "prices will remain near current levels in 2022, averaging $70 (using Brent crude which is pricier than the WTI). That would be higher than the pre-pandemic price below $60 or the 2021 median price of $69.

If the EIA forecast is right and the monthly price averages$70 a barrel before the November elections*,* that *would rapidly shrink the year-to-year change to 35% in January, 19% in February, 12% in March, -1.9% in June, and -16.4% by October 2022.* The 12-month rate of oil price inflation would not fall as quickly if the oil price instead averages $75 a month - as depicted in the graph - but the year-to-increase would still drop to 5% by June and to -7.4% by October.

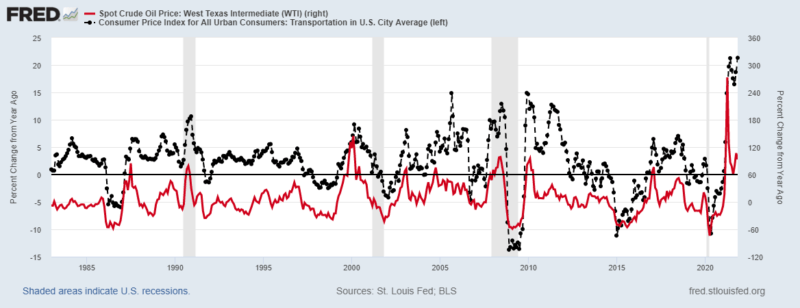
A year-to-year drop of 7%-16% in the oil price would be modest by previous experience. Year-to-year crude oil prices fell by 34%-58% in 1986, 1991, 1997, 2001, 2009, and 2015, though it sometimes took more than 12 months for the price to fall that much. Falling year-to-year oil prices, in turn, brought slow or negative year-to-year CPI inflation.

In October 1990, when the price of WTI crude oil was up 78.8% from the same month in 1989, the consumer price index was up 6.4% from a year earlier. But one year later, WTI crude oil had fallen 35.3% and year-to-year CPI slowed to 2.8%.

In July 2008, when the price of oil was up 79.9% from a year before, consumer prices were up 5.5%. But one year later, the crude oil price had fallen 52% year-to-year and CPI inflation turned negative, to minus 2%.

As we now look ahead to 2022, the year-to-year rise in oil prices will start to turn negative by June if oil stays around $70 or October if it stays near $75. Year-to-year reported inflation in energy-intensive goods and services can likewise be expected to slow sharply as 2022 progresses.

The second graph from FRED (Federal Reserve Bank of St. Louis) shows how year-to-year changes in the CPI for transportation, for example, move up and down with year-to-year changes in the oil price. Producer prices for oil-intensive products such as fertilizer and plastics also follow oil prices up and down. Like transportation costs, those prices also greatly affect prices of other products - such as grain, dairy, and meat prices in the case of fertilizer, and packaged goods in the case of plastics.



Crude oil is only one price among many that rose rapidly in 2021 but will appear to be falling on a year-to-year basis by the summer of 2022 - even if the monthly price remains the same. (The same logic does not apply, however, to rent and other prices that increased little in 2021).

Used cars offer another excellent example of a 12-month pace of inflation that cannot possibly continue. The CPI for used cars and trucks peaked at 160.4 in January 2001 and had fallen to 139.5 by July 2020. Even in March 2021, the used car index was still below the 1994 peak (151.2) before leaping 30% to 197.2 in June. Headlines promptly reported that as an alarming 45.2% rate of "inflation" in used car prices, as if it was part of an ongoing trend. But at that pace, used cars would quickly become far more valuable than new cars and the index would reach 286.5 by June 2022 - an impossible trajectory.

The used car index remained roughly unchanged from June to November, averaging 197.3. Even if that number could somehow remain at that record high through June 2022, the recorded year-to-year change of 45.1% in June 2021 would nonetheless drop to 18.6% by April 2022, then 10.5% in May and zero in June.

If the used car price index in June 2022 instead dipped back to the more-normal level of March 2021, that would amount to a *23.3% decline* in used car prices compared with a year before. Discounting of overpriced used cars is to be expected as new vehicle production picks up. IHS Markit forecast a [16.9% rise](https://ihsmarkit.com/research-analysis/fuel-for-thought-auto-demand-levels-remain-depressed-on-chip-famine.html) in North America in production of cars and light trucks in 2022 and a 17.8% rise in Europe. And KPMG predicts that [used car prices could crash](https://advisory.kpmg.us/articles/2021/used-car-prices-could-crash.html) by roughly 30% before October 2022, a warning that could dampen demand for the increased number of new vehicles by reducing trade-in values.

In short, one thing we can confidently project about 2022 is that year-to-year measures of "inflation" in prices of used cars and energy will be near zero by the third quarter, if not below zero. That is nearly a sure thing, baked-in-the cake.

Once the new Spring and Summer consumer price statistics begin rolling in, embarrassed economists and reporters who had long been pointing backwards at year-to-year price changes to warn of ever-increasing future inflation may have to either switch to a different way to measure inflation or switch to a different tune.

#### Inflation peaked, and consumers are still optimistic

Anneken Tappe 12/23. Senior Writer, CNN Business. "A key inflation measure just hit a nearly four-decade high." CNN, December 23, 2021. https://www.cnn.com/2021/12/23/economy/us-inflation-pce-incomes-november/index.html

New York (CNN Business) – Prices remain high in America, and inflation shows no sign of slowing down anytime soon.

A key measure of US inflation rose 5.7% in the 12 months ended in November, the Bureau of Economic Analysis said Thursday. It was the fastest increase in the consumer spending price index since July 1982.

Economists multiple inflation gauges each month, but the so-called PCE inflation is the Federal Reserve's preferred measure and informs the central bank's policy decisions.

Stripping out energy and food prices, both of which jumped over the period, the price index advanced 4.7%, the biggest increase since September 1983.

For anyone hoping there would be an end to the exorbitant climb in prices before year-end, this was a disappointment. But it could be the peak.

"We suspect that the November and December headline figures will mark the top given a modest energy price pull-back into the turn of the year," said Mike Englund, chief economist at Action Economics, in a note to clients.

And indeed, prices rose at a slightly slower pace in November -- 0.6% compared with the 0.7% gain in October. Excluding volatile food and energy costs, prices rose 0.5%, unchanged from the prior month.

Englund expects the so-called core price index to reach a peak in February, "given 2020 comparisons that show a big core price acceleration starting last March."

American incomes also rose last month, but not as quickly as prices.

Total incomes rose by 0.4%, or $90.4 billion, slightly less than in October, while disposable incomes also increased by 0.4% last month, corresponding to $70.4 billion.

But consumer spending outgrew both income measures, rising 0.6%, or $104.7 billion as people were getting busy shopping for the holidays.

That said, most of the increase was down to higher spending on services, particularly housing and utilities.

The personal savings rate declined to 6.9%, a small decrease from the month before.

Prices are high, but Americans are optimistic about the economy

Even though the high pandemic-era inflation is weighing on people's living standards, Americans are optimistic about the path of the recovery next year, according to the University of Michigan's consumer sentiment survey.

The sentiment index stood at 70.6 in December, slightly above economists' expectations and higher than in November.

The uptick was in large part due to higher incomes for lower-earning households, said Richard Curtin, Surveys of Consumers chief economist.

"The bottom third [of the income distribution] expected their incomes to rise during the year ahead by 2.8%, up from 1.8% last December, and the highest level since 2.9% was recorded in 1999," said Curtin.

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

#### Energy prices don’t cause economy wide inflation

Newell 21 Richard G. Newell is president and CEO of Resources for the Future, a nonprofit research organization, and former administrator of the U.S. Energy Information Administration. Oct. 20, 2021. “Clean Energy Didn’t Cause Recent Price Increases. How to Understand Energy Inflation.” <https://www.barrons.com/articles/why-todays-energy-inflation-is-different-51634677139> {DK}

The energy-price increases we have seen over the past year will no doubt put strain on some American pocketbooks. But that trend should not be an added reason to worry about the broader wellbeing of the American economy. In fact, the energy inflation we’re now seeing may prove to be less of a lasting concern than history might suggest.

To be sure, increasing energy prices and related inflationary concerns are historically associated with shocks to the price of fuels, particularly oil and the products derived from it such as gasoline and fuel oil. While the relationship between fuel prices and inflation has weakened over the past few decades, it’s understandable that many consumers feel anxious about inflation. Many of us remember the energy crises of the 1970s, when both oil prices and inflation skyrocketed as crude-oil exports from the Middle East plummeted. That crisis was compounded by an economic recession, so it is no wonder that people today are left fearful of a broader economic reaction to increasing oil prices. But it is important to remember how much the economy has changed since then. Although consumer energy prices rose 25% over the past year, the “energy share” of the consumer price index is now only 6% to 7%. In contrast, in 1980 the energy share of expenditures was twice that level at 13%. That means that rising energy costs have affected a relatively small and generally declining part of Americans’ cost of living. Therefore, while overall inflation rose 5.4% over the past year, energy contributed about 1.4% of that total.

There are also other reasons energy inflation should be a fading worry and is not a solid rationale for second guessing the need for an energy transition toward lower-carbon energy sources.

First, these price increases represent a return to expected levels after a period of pandemic-induced low demand. From September 2020 to September 2021, the U.S. benchmark price per barrel of oil rebounded from $40 to $72. Historic worries about inflation have been associated with an extended period of demand growth outstripping supply, causing producers to raise prices in response. But the world today has ample reserves of oil and natural gas available for current demand. As supply ticks up in response to consumption returning to pre-pandemic levels, this short-term price correction should stabilize and is not likely to develop into a long-term trend. To put this in perspective, the price of oil averaged about $70 per barrel over both the past 10-year period and past 15-year period, so current prices are a return to more typical levels.

Second, the U.S. energy landscape has changed. We have moved on from a period when the country’s energy needs were increasingly satisfied by imports of oil and gas, to one where the country is a net exporter of energy. This shift in the energy trade balance tends to moderate the overall macroeconomic impact of energy price increases. Moreover, the same technologies that have underpinned the surge in U.S. oil and gas production over the past decade are also more quickly responsive to price swings. That means the recent price increases will incentivize additional supplies much more quickly than in the past.

Above all, it’s important to remember that clean energy did not cause the recent energy-price increases. If anything, I would argue that now is the time to actually increase clean-energy investments. As capital is relatively abundant and interest rates are low right now, it is a prime time to invest in these new technologies. Clean-energy technologies that underpin the budding energy transition—like wind, solar, nuclear power, and electric vehicles—tend to be capital-intensive and do not rely on traditional fuels of inelastic supply and demand like oil and gas to operate. This makes clean energy much less vulnerable to price shocks. Increasing the share of clean energy in the economy is therefore likely to further moderate, rather than exacerbate, inflationary swings. The shift toward a more capital-intensive, fuel-light, and electricity-centric energy system should lead to energy no longer being an outlier in the consumer price index.

### 2NC---A/C

#### Laundry list of alt causes to economic decline.

Faiola 1-12 (Anthona Faiola, BA in Communications from Florida International University, Writer for the Washington Post; “As pandemic rages on, the global economy is its latest victim;” 01-12-22, The Washington Post, <https://www.msn.com/en-us/news/world/as-pandemic-rages-on-the-global-economy-is-its-latest-victim/ar-AASGvI8?ocid=BingNewsSearch>, TM) [language modified, denoted by brackets]

Fair warning: This isn’t what you wanted to hear at the start of the new year. But the engines of the global economic recovery — which revved into high gear in 2021 after the world ground to a halt in 2020 — are slowing down.

And 2023 could be even worse.

Taken together, this year and next are set to mark the sharpest slowdown after an initial rebound from a global recession since at least the 1970s. That grim assessment comes from the World Bank’s biannual Global Economic Prospects report, released Tuesday. After rebounding to an estimated 5.5 percent global growth in 2021 on the heels of the 2020 pandemic recession, the report said growth is poised to decelerate to a worse-than-expected 4.1 percent this year, and then soften to 3.2 percent in 2023.

Blame the slippage on the omicron variant, coupled with persistent disruptions to supply chains, nagging vaccine inequality, soaring energy and food prices,— a bill that has now drained the ability of many to keep protecting and [stifling] ~~crippling~~ levels of national debt as countries pick up the ever-expanding tab for the pandemic workers and businesses damaged by the seemingly endless covid crisis.

Shrinking global growth is not an equal opportunity offender. Mounting evidence suggests the eruption of what the World Bank has called a “pandemic of inequality,” with the wealth gap worsening both among and within nations in a manner not seen in a generation.

“The core issue that’s going on in the world is inequality, poor people being hit the hardest by covid, but also by interest rate hikes, by inflation, by macro policies and vaccine inequality,” World Bank President David Malpass said Monday in an interview with The Washington Post.

He added, “it’s especially harsh on people in poorer countries. And we’re seeing reversals in development that will leave scars for decades. That includes education, health, food insecurity and so on. Inflation is [also] a big problem. It’s hard to stop.” On the heels of deadly demonstrations in Kazakhstan, experts are also warning that deepening inequalities created by the pandemic — coupled with worse-than-expected growth and more extreme weather from climate change — could lead to more civil unrest. “The resulting global divergence will create tensions — within and across borders — that risk worsening the pandemic’s cascading impacts,” warned a new report, also published Tuesday, by the World Economic Forum. Let’s put this into perspective. Rich nations are now on track to get their economic groove back by 2023, completing a rebound back to pre-pandemic trajectories. Not so for developing countries. Some of the worst hit are nations in conflict and tourism-based economies. In fact, in one-third of emerging markets, output this year is expected to be even worse than in 2019, hampering efforts to combat global poverty and fund education, health-care and social programs. Even China — a major anchor of the global economy — is set to see growth abate to a relatively weak 5.1 percent this year as its real estate woes spill into the broader economy, according to the World Bank’s report.

[[VIDEO OMITTED]]

So who will see the sharpest drops?

Overall, the World Bank’s 4.1 percent growth figure for 2022 is revised down from an earlier prediction last June of 4.3 percent. But that seemingly small 0.2 percentage point revision includes some major national nose-dives. Crippled by Turkish President Recep Tayyip Erdogan’s unorthodox interest rate policy that spurred a plunge in the lira and spiking inflation, Turkey’s economy is set to fall from 9.5 growth percent in 2021 to 2 percent this year. Growth in Brazil is set to fall from 4.9 percent last year to 1.4 percent.

Even those outlooks could be rosy.

In some countries, the risk of so-called “hard landings” — even steeper economic plunges that follow growth spurts, like the one the world saw in 2021 — is increasing.

As Fortune reported, omicron may be less severe than the delta variant, but it could hit the global economy harder. Fresh lockdowns, travel cancellations, more woes for supply chains and overburdened hospitals due to the new variant are poisoning a well already teeming with surging inflation and fears of rising interest rates.

One problem with all this: The unpredictable pandemic has made forecasting far harder, as The Post reported Tuesday. Ian Shepherdson, chief economist and founder of economic research firm Pantheon Macroeconomics, for instance, anticipated the creation of 850,000 U.S. jobs in December. What the United States actually got was 199,000 new workers.

“Everybody wants to be pursuing precision,” he told my colleague David J. Lynch “But even before covid, it was like hitting a moving target from a moving vehicle. Now, we’ve got a blindfold on as well.”

But where revisions are being made, they’re tending to be more pessimistic, dampening the broad economic optimism witnessed a few months ago. The International Monetary Fund has delayed its global growth forecasts, initially set for Jan. 19, to late January after its managing director warned of further downgrades in predictions due to the surging pandemic. Goldman Sachs recently cut its 2022 growth forecast for the United States from 4.2 percent to 3.8 percent.

“After the new year, a steady trickle of growth-downgrades became a torrent,” Bernhard Warner wrote in Fortune. The outlet quoted Berenberg Bank chief economist Holger Schmieding as telling investors last week that omicron would shave as much as 1 percent off gross domestic product in the euro zone and Britain.

Some developing countries could be harder hit. The toxic cocktail of slowing economies and high debt is escalating the threat that some countries won’t be able to pay their bills this year.

# 1NR

## DA---Bedoya

### OV

#### Bees are dying off---extinction

Gomez 18 – Jacy Gomez, Associate at Keybridge Communications, Contributor at U.S. News & World Report, Contributor to the Washington Examiner's Beltway Confidential Blog, Communications Specialist and Former Congressional Staffer for U.S. Sen. Chuck Grassley, “Bees are Critical to our Survival”, The Gazette, 2-1-2018, http://www.thegazette.com/subject/opinion/guest-columnist/bees-are-critical-to-our-survival-20180201

An attack on these important insects is exceedingly problematic. Wild bees are critical to safeguarding U.S. food supplies and growing our economy. Such utter disregard for bees — whether domestic or wild — puts the species one step closer to extinction.

Wild bee populations have dramatically declined in recent years. At least 37 percent of bee species are declining, according a 2015 United Nations report. Worse still, roughly 9 percent of bee species are facing extinction.

Within the past two decades, some bee populations declined by more than 90 percent.

There are several reasons. Take pesticides. More than 1 billion pounds of pesticides are used in the United States each year. Worldwide, that number is 5.6 billion pounds.

Pesticides can be poisonous to bees. In Oregon, for example, at least 50,000 bumblebees died suddenly after their tree habitat was sprayed with a neonic dinoteguran to control aphids.

Loss of habitat also is a major threat. Here in the United States, we lose about 6,000 acres of habitat per day thanks to land development projects, ethanol production and farm crops. The lack of available habitat makes it nearly impossible for bees and other pollinators to survive.

Climate change is another reason. As Defenders of Wildlife explains, “Shifting temperature and precipitation patterns (alter) the distribution of plants and their flowering times.” This makes it difficult for bees to receive proper nourishment.

Regardless of the cause of their demise, diminishing bee populations are a major threat to human survival.

For starters, bees are critical to safeguarding the global food supply. By transporting pollen between flowers and crops, bees are responsible for producing many important crops that humans enjoy daily. In the United States, bees pollinate more than 90 commercial crops. These crops include nuts, fruits and vegetables.

The same is true worldwide. In fact, the United Nations’ Food and Agriculture Organization reports that roughly 90 percent of the global food supply originates from 100 crop species. Of those species, more than 71 percent rely on bees for pollination.

You can thank bees for one of every three bites of food you eat in your lifetime. According to a June 2014 White House report, bees contribute more than $15 billion to our economy through their role as pollinators.

California’s almond industry, almost exclusively pollinated by honeybees, was valued at roughly $533 billion in 2015.

It may seem counterintuitive to care about bugs, but bees are a critical part of human survival.

#### Topsoil is depleting---extinction – small farms are key

Shah 18 – Vaidehi Shah, Media Advisor at Climate Media Centre at the University of Warwick, Associate Editor at Eco-Business, Master’s in Gender and International Development from the University of Warwick, BSci in Geography from the University of Singapore, Former Policy Executive at the National Climate Change Secretariat, “Our Dying Soils: The Invisible Crisis Under Our Feet”, Eco-Business Special Report, 3-19-2018, http://www.eco-business.com/news/our-dying-soils-the-invisible-crisis-under-our-feet/

The world relies on healthy soils for food, water, and a liveable climate. But soils are rapidly losing the ability to support life thanks to unsustainable development and industrial agriculture. Is enough being done to address this crisis?

Ana Maria dos Santos Suares, a farmer in Timor Leste’s Ermera municipality, has much more free time on her hands now than she did a few years ago. Where she once spent day after day weeding in her maize fields, she now only needs to do so once in a planting season.

“We use the remaining time to plant other crops such as potato and taro, cook, feed the pigs, look after the children, and rest,” says Suares in a documentary by the Food and Agricultural Organization of the United Nations (FAO).

This change is thanks to a project FAO has been conducting in districts across Timor Leste since 2013 to promote an alternative farming method to burning the land, ploughing it, and weeding it regularly.

Instead of this traditional practice, FAO encourages three strategies: First, minimising soil disturbance by inserting seeds directly into the soil; second, covering the soil with a layer of crop residue, or mulch—this is what prevents weed growth—and third, planting a variety of crops on the soil.

Suares, who is one of several farmers involved in the FAO project, says that switching to these practices has improved the quality of maize on her farm. And because the mulch retains water for several weeks, she still gets a good yield even if there is a long drought, or seeds are planted late in the season.

She offers an analogy for the difference between traditional practices and the ones FAO advocates: “Just like humans will burn in the sun without clothes, the ground needs to be covered with mulch.”

Suares adds: “If we do not keep the soil fertile, then over time our children will have problems. They will not have enough food, and will suffer.”

An invisible crisis

This is a reality that FAO knows all too well, and is at the heart of its work to preserve and restore the health of the world’s soils.

The UN agency estimates that a quarter of the Earth’s surface—land that could feed 1.5 billion people—has already become degraded, and a further 24 billion tonnes of fertile topsoil are lost to erosion, deforestation, and unsustainable farming practices every year.

This boils down to one disturbing prediction: The world could have as little as 60 years of harvests left, a scenario that would have knock-on effects on global food security—as well as geopolitics and security—and affect the crucial role soil plays in regulating the global climate and maintaining biodiversity.

So what is a healthy soil? It is a complex measurement that involves assessing physical, biological, and chemical properties. According to FAO, the most relevant qualities are “nutrient availability, workability—that is, the readiness of the soil to be tilled and cultivated, contingent on factors such as water content and structural sability—oxygen availability to roots, nutrient retention capacity, toxicity, salinity and rooting conditions”.

Problems with soil health also take various forms ranging from nutrient loss, erosion, acidification, and contamination by pollutants and toxic chemicals, to name a few. Often, these go hand in hand; for example, when soil erosion takes place, the most fertile layer—topsoil—is the first to be lost, thereby reducing the nutrient content of the soil.

As David Montgomery, professor of earth and space sciences at the University of Washington, intones: “Soil health is like human health; it is hard to define, but you sure know when you don’t have it.”

Definitions may be elusive, but experts agree on two things: first, that intense, large-scale industrial agriculture has been a key driver of soil degradation in recent decades; and second, the world isn’t paying nearly enough attention to this looming crisis.

Yuji Niino, technical officer, FAO, explains: “We recognise that soil degradation is due to the loss of organic carbon.” Essentially, this is the sum of biologically diverse organisms found in the soil including microbes, fungi, invertebrates such as worms, slugs and insects, root matter, and decomposing vegetation.

Soil carbon is widely considered to be the most important component of soil because it is the main source of micro-organisms that live in the soil, determines the availability of nutrients for plant growth, and even affects how resistant soil is to erosion.

In the past, traditional farming methods would return organic carbon to the soil after each harvest by applying manure or crop residue, says FAO’s Niino.

“But modern, mechanised, industrialised farming has eliminated this,” he notes. Today, a major portion of crop residues is usually used for other purposes such as making biofuels and animal feed.

“Three to four decades of not returning this organic matter to the soil has almost completely depleted the soil organic carbon in some regions in Africa and South Asia as well as tropical semi-arid regions with intensive farming practices,” says Niino.

The consequences of soil degradation are severe, and range from exacerbating global hunger to causing biodiversity loss, and contributing to climate change when soil carbon is released into the atmosphere.

A 2015 report by Economics of Land Degradation, a global initiative, estimates that land degradation costs the global economy between US$6.3 trillion and 10.6 trillion annually.

Given the severity of soil degradation and its impacts, and the rapidly depleting lifespan of the world’s soils, Niino observes that the issue “has been ignored for a long time”. There was virtually no international focus on the issue until 2002, when the United Nations declared December 5 as World Soil Day.

More than a decade later, 2015 was designated as the International Year of Soils.

Niino explains that a lack of global attention to the issue of soil degradation is likely because it is a slow-onset and relatively invisible crisis. There have been decades of heated debate about water scarcity because of falling water levels, drying lakes and riverbeds, and dying vegetation are instant and noticeable symptoms of the problem, notes Niino.

“In contrast, farmers and everyone else cannot see the immediate impact of land degradation and soil productivity losses,” he says. “They may notice declining yields if they compare to the past decade or two, but it’s not an immediate impact they can see.”

Soil health is like human health; it is hard to define, but you sure know when you don’t have it.

David Montgomery, professor of earth and space sciences, University of Washington

Asia’s soil future

Niino notes that soil degradation is especially severe in South Asia and Southeast Asia. Years of mono-cropping staples such as rice and the rise of industrial agriculture—for example, a shift from traditional crops such as rain-fed paddy to cash crops such as palm oil, sugarcane, and cassava— in Southeast Asia have exacerbated soil degradation in the region.

Demographic and economic pressures such as urbanisation, population growth, and economic development have also led to land use change and put further pressure on Asia’s soil resources, says Niino. To promote sustainable soil management practies, FAO published a set of voluntary guidelines in 2017, which recommend best practices from both a technical and policy perspective.

A global map of the constraints placed on soil health. Image: FAO

In a 2015 report on the State of the World’s Soul Resources, FAO notes that Asia has the highest percentage of human-caused land degradation of any region globally. Deforestation has been a key cause of this, followed by agriculture and overgrazing.

Currently, FAO says that for most criteria such as erosion, contamination, acidification and nutrient imbalance, the quality of soil is broadly poor and deteriorating. For soil carbon content, the status is classified as poor but variable.

A better way

To address the soil degradation crisis in Asia and globally, FAO has been working with governments and communities to manage soil more sustainably.

A key solution FAO has promoted is conservation agriculture, which entails the three principles the UN agency is promoting in Timor Leste and other project areas: no tillage—that is, disturbing or ploughing the soil—keeping the soil covered with crop residue or plants at all times, and growing a variety of crops on a rotational basis rather than constant cultivation of a single crop.

#### Turns and solves climate

Gustin 19 (Georgina Gustin, covers agriculture for Inside Climate News, won numerous awards, including the John B. Oakes Award for Distinguished Environmental Journalism and the Glenn Cunningham Agricultural Journalist of the Year, formerly reported for the St. Louis Post-Dispatch and CQ Roll Call, graduate of the Columbia University Graduate School of Journalism, “Industrial Agriculture, an Extraction Industry Like Fossil Fuels, a Growing Driver of Climate Change,” Inside Climate News, 1-25-2019, https://insideclimatenews.org/news/25012019/climate-change-agriculture-farming-consolidation-corn-soybeans-meat-crop-subsidies/)

On his farm in southwestern Iowa, Seth Watkins plants several different crops and raises cattle.

He controls erosion and water pollution by leaving some land permanently covered in native grass. He grazes his cattle on pasture, and he sows cover crops to hold the fertile soil in place during the harsh Midwestern winters.

Watkins’ farm is a patchwork of diversity—and his fields mark it as an outlier.

His practices don’t sound radical, but Watkins is a bit of a renegade. He’s among a small contingent of farmers in the region who are holding out against a decades-long trend of consolidation and expansion in American agriculture.

Watkins does this in part because he farms with climate change in mind.

“I can see the impact of the changing climate,” he said. “I know, in the immediate, I’ve got to manage the issue. In the long term, it means doing something to slow down the problem.”

But for several decades, ever-bigger and less-varied farms have overtaken diversified operations like his, replacing them with industrialized row crops or gigantic impoundments of cattle, hogs and chickens.

This trend is a central reason why American agriculture has failed to deal with climate change, a crisis that has been made worse by large-scale farming practices even as it afflicts farmers themselves.

Consolidation has swallowed smaller farms, bolstering a financial and regulatory status quo that has thwarted the kind of climate-friendly approach Watkins and his fellow outliers employ.

“I don’t think any of us wants to get bigger,” Watkins mused. “It’s just the curse of a commodity business. We made all the focus on production, and all the economics, the subsidies, are tied to production. We have a production-focused agriculture policy.”

This article is part of a series by InsideClimate News exploring agriculture’s role in the global warming crisis and the forces preventing it from playing a greater part in combating climate change.

The consolidation of American farming, reinforced by an emphasis on just one or two main crops—corn and soybeans—has led to a system in which there’s little incentive to grow much else, especially in the agricultural heartland of the Midwest.

This has profound climate and environmental implications. Mega-sized farming encourages practices that degrade the soil, waste fertilizer and mishandle manure, all of which directly increase emissions of greenhouse gases. At the same time, it discourages practices like “no-till” farming and crop rotation that grab carbon dioxide from the air, store it in the soil and improve soil health.

“The industrial food system presents a barrier to realizing the potential climate benefits in agriculture,” said Laura Lengnick, a soil scientist who has written extensively on climate and agriculture. “We continue to invest in this massive corn and soybean and beef-making machine in the Midwest despite all that we know about the changes we could make that would maintain yields, improve farm profitability and deliver climate change solutions.”

This is happening as landmark government reports and ample academic research show that agricultural soils are critical for stabilizing the climate.

One recent government report called the trend toward ever-bigger farms “persistent, widespread and pronounced.”

The report, a comprehensive assessment of consolidation published last year by the U.S. Department of Agriculture’s Economic Research Service, confirmed what was already apparent to small farmers: “Agricultural production has shifted to much larger farming operations over the last three decades.”

While the report concluded that consolidation is responsible for improvements in productivity, it noted: “At the same time, large-scale farming operations are said to force small farms out of business, damage the viability of rural communities, reduce the diversity of agricultural production, and create environmental risks through their production practices.”

More than a third of cropland is on farms bigger than 2,000 acres. That’s twice the share of land held on big farms 30 years ago.

Bigger operations are richer, too. Half of the value of farm production came from those with annual sales of at least $1 million.

The drivers behind this ongoing expansion are intertwined and complex—a confluence of politics, economics and technology. Agricultural policy has long emphasized over-production, propped up by government subsidies that favor certain crops. Lawmakers have been unwilling to change the system, largely because of a powerful farm lobby and the might of agribusinesses that profit from technological advancements.

“Farmers are dictated in how to farm,” said Adam Mason, a policy director with Iowa Citizens for Community Improvement. “They’re locked into a system.”

This system has transformed agriculture into a business that resembles the fossil fuel industry as it extracts value out of the ground with relentless efficiency and leaves greenhouse gas pollution in its aftermath.

“From a climate, soil health, and carbon sequestering perspective, we need greater diversity,” said Ferd Hoefner of the National Sustainable Agriculture Coalition. “We’re never going to make huge progress on soil health and carbon sequestration until we get that diversity.”

#### t/grid – it’s the controlling terminal, grid impact happens after the DA’s which means cooperation breakdown because of a dysfunctional US should trigger the same impacts

#### turns enforcement - Bedoya confirmation key to rulemaking

Conley et al 1/19 Wiley Rein LLP: Stephen Conley, Duane Pozza, and Kathleen Scott. “‘An Avalanche of Rulemakings’ – The FTC Gears Up for an Active 2022.” January 19, 2022. <https://www.jdsupra.com/legalnews/an-avalanche-of-rulemakings-the-ftc-1324181/> {DK}

Much of the FTC’s Expansive Rulemaking Agenda Likely Hinges on Confirmation of a Fifth Commissioner

President Biden originally nominated Alvaro Bedoya on September 13, 2021 to fill the FTC Commissioner seat vacated by former Commissioner Rohit Chopra upon his confirmation as Director of the Consumer Financial Protection Bureau on September 30. Bedoya is the founding director of the Center on Privacy & Technology at Georgetown Law and previously served as the first Chief Counsel to the U.S. Senate Judiciary Subcommittee on Privacy, Technology and the Law. He faced opposition from Republican senators on the U.S. Senate Committee on Commerce, Science, & Transportation (Committee) during his November 17, 2021 confirmation hearing, but President Biden renominated him to the FTC Commissioner spot on January 4, 2022. He appears likely to be the swing vote on many of these proposed rulemaking initiatives – not just whether they will go forward, but also their scope and ambition if they do so.

### AT: N/L – T/L

#### 2 – FTC’s PC – is finite and key – intensifying centrists’ concerns about overreach is fatal

Salvino 11-1-21 (Mary Ashley Salvino, Cybersecurity Lawyer and Privacy & Data Security Professional at Bloomberg Law, CIPP/US, CIPM, member of the DC Bar, JD City University of New York School of Law at Queens College, “ANALYSIS: How Will the FTC Get Its Privacy Mojo Back in 2022?” Bloomberg Law, 11-1-2021, https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-how-will-the-ftc-get-its-privacy-mojo-back-in-2022)

Leveraging Democratic Political Capital

The odds are likely that the FTC will seek to optimize and strengthen its authority via its new left-leaning leadership. Lawyers should keep an eye on how the FTC leverages and aligns political capital in a way that maximizes innovation and cooperation with Democrats in Congress. Be ready for a robust rulemaking effort by the FTC, accompanied by a strong push for uniform privacy legislation.

The confirmation of Alvaro Bedoya as an FTC commissioner will likely give the FTC new leadership and momentum to focus on alternative rulemaking in consumer privacy protection. Additionally, Lina Khan, the new FTC chairwoman, has expressed interest in forging new antitrust rules, which could extend to creating additional privacy rulemaking.

In terms of political calculus, a strengthened regulator faces the same bipartisan gridlock characterized by a divided Congress. Yet legal practitioners should be aware of a growing momentum on both sides of the aisle, seeking more stringent regulations on unbridled Big Tech firms, as well as emerging nonpartisan sentiments toward seeking protection for children online.

Exploring Unprecedented Funding Initiatives

On Sept. 14, the House Committee on Energy and Commerce voted to appropriate an unprecedented $1 billion over 10 years to the FTC to establish and operate a new privacy bureau. Such an infusion, if passed by Congress, would instantly transform the FTC’s ability to effectively regulate unfair or deceptive acts or practices relating to privacy, data security, and data abuses. To put this infusion into perspective, it is critical to compare to FTC’s privacy budget for 2021 ($13 million) to its overall budget of $351 million.

Looking forward to 2022, it is likely that continued political alignment will be necessary to reinforce (and perhaps even expand) the FTC’s data privacy enforcement power. However, proponents of the FTC funding boost will need to reckon with rigorous bipartisan scrutiny in the Senate, as well as fierce opposition skepticism by Republicans and centrist Democrats alike. At the very least, proposals will face serious funding trimming, and even full-throated opposition, by legislators concerned about agency overreach.

#### 4 – epistemology – prefer consilience of Kovacic’s expertise as former FTC Chair, principal-agent theory, AND empirical studies

Miller 5 (Gary J. Miller, Emeritus Professor of Political Science, Washington University in St. Louis, PhD University of Texas at Austin, “The Political Evolution of Principal-Agent Models,” Annual Review of Political Science, vol.8, 2005, pp.203-225, DOI: 10.1146/annurev.polisci.8.082103.104840)

For principal-agency theorists, bureaucratic independence and congressional “dominance” are observationally equivalent as far as monitoring and sanctions are concerned. We should see little of either if bureaucrats are independent; but we should also see little if bureaucratic behavior is shaped by congressionally imposed incentives. Therefore, it is necessary to look beyond monitoring and sanctions to bureaucratic outputs, to determine if they can be shown to vary with congressional preferences. In the case of the Securities and Exchange Commission, Weingast argues that its imposition of deregulation was in response to congressional representation of the interests of large institutional investors. With respect to the Federal Trade Commission (FTC), Weingast & Moran (1983) show more convincingly that the ideological preferences of the Senate and the subcommittee chairman (as measured by Americans for Democratic Action scores) were significantly associated with the FTC’s emphasis over time on consumer-oriented credit (p. 789). In other words, a more conservative Senate led to a less consumer-oriented FTC.

Although neither of these empirical forays could be regarded as the final word on the subject, Weingast’s articles constitute an enormous contribution to the study of congressional oversight and public bureaucracy by exemplifying quantitative research directed at precise questions (e.g., what are the political and other determinants of bureaucratic outputs?) derived from rigorous theory. Almost singlehandedly, these articles raised the bar for academic research in the area of bureaucracy. Weingast (1984) offers the “congressional dominance” hypothesis: “The mechanisms evolved by Congress over the past one hundred years comprise an ingenious system for control of agencies that involves little direct congressional monitoring of decisions but which nonetheless results in policies desired by Congress” (p. 148).

### AT: N/L – Court Shields

#### Interpreting the plan to “be the courts” is the link – only possible way that happens starts with FTC overreach bringing a novel liability theory before the courts – the fact that courts abide because of fiat only makes Congressional retaliation against FTC more likely – implicates our Biden PC link too – because he’ll obviously also be a target of pressure campaigns – it’s NOT a question of who’s blamed for the Court ruling, BUT rather who has the power to prevent agencies from bringing similar cases to the courts

Jones and Kovacic 20 (Alison Jones, Professor of Law, King’s College London; and William E. Kovacic, King’s College London, George Washington University, United Kingdom Competition and Markets Authority; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

The discussion below, and history, seems to indicate, however, that more courage and more people will not necessarily overcome the implementation obstacles that stand in the way of a program that requires the rapid prosecution of a large number of complex cases against well-resourced and powerful companies. Indeed, the criticisms levied at the current system, the proposals for more effective enforcement and reform, and the scale of the action being demanded bear some resemblance to those that led to a more re-invigorated and aggressive antitrust enforcement policy in the 1960s and early 1970s. For example, at that time complaints that the FTC was in decay, was obsessed with trivial cases and failing to address matters of economic importance, anticompetitive conduct, and rising concentration,77 led the FTC to embark on a new, bold, and astoundingly broad enforcement program.78 In an effort to meet criticisms of it as a shambolic and failing institution, the FTC sought to upgrade its processes for policy planning, made concerted efforts to improve its human capital in management and case handling, and sought to improve substantive processes and the quality of its competition and consumer protection analysis.

In the end, FTC’s efforts to improve capability proved insufficient to support the expanded enforcement agenda, partly because the Commission failed to formulate an adequate plan to overcome the full range of implementation obstacles. The FTC seriously overreached because it did not grasp, or devise strategies to deal with, the scale and intricacies of its expanded program of cases and trade regulation rules, the ferocious opposition that big cases with huge remedial stakes would provoke from large defendants seeking to avoid divestitures, compulsory licensing, or other measures striking at the heart of their business, and the resources required to deliver good results. The Commission lacked the capacity to run novel shared monopoly cases that sought the break-up of the country’s eight leading petroleum refiners and four leading breakfast cereal manufacturers79 and simultaneously pursue an abundance of other high stake, difficult matters involving monopolization, distribution practices, and horizontal collaboration. The FTC also overlooked swelling political opposition, stoked by the vigorous lobbying of Congress, that its aggressive litigation program provoked.80

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.

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

A. Judicial Resistance to Extensions of Existing Antitrust Doctrine

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

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

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

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

B. Infirmities of Section 5 of the Federal Trade Commission Act

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

C. Designing Effective Remedies

Important issues arising for the new enforcement strategy proposed will be what remedies should be sought; how can an order, or decree, be fashioned to ensure that the violation is terminated, that competition on the market is restored, the opportunity for competition is re-established, and that future violations are not committed and deterred; and will a court be likely to impose any such remedy.102

The Sherman Act treats infringements of its key commands as crimes attracting severe sanctions, including fines (corporate and individual) and imprisonment. Although since 1980, the DOJ has used criminal prosecutions only to challenge hard-core horizontal cartels,103 some antitrust reform proponents are calling for the introduction of fines to sanction illegal monopolization, and some commentators have proposed that the DOJ reconsider its policy of not seeking criminal penalties beyond the Section 1 conspiracy context.104 For the time being, however, it would appear that existing civil sanctions will remain the tool of choice for DOJ in dealing with antitrust infringements and will be the only set of remedies available to the FTC, which has no mandate to bring criminal cases.

The civil remedial options, which can broadly be grouped into three categories, for the federal agencies, are nonetheless powerful in principle. The first and, perhaps, the most common form of remedy consists of controls on conduct. Conduct-related relief ordinarily takes the form of cease and desist orders that forbid certain behavior or, in a smaller number of cases, compel firms to engage in affirmative acts, such as providing a competitor access to an asset needed to compete.

The second major form of remedy is structural relief in the form of divestitures or the compulsory licensing of intellectual property that enables a firm to enter a previously monopolized market. The boundary between purely conduct-based and structural remedies is not always clear. A compulsory licensing decree has strong structural features (it directly facilitates new entry) and conduct elements (it may require the owner of the patent to provide the licensee know-how and updates of the patented technology).

The third remedy consists of civil monetary relief in the form of disgorgement of ill-gotten gains or the restitution of monopoly overcharges to victims. A number of Supreme Court decisions in monopolization cases in the late 1940s and early 1950s appeared to hold that these forms of recovery are encompassed in the mandate of courts to order equitable remedies to cure antitrust violations. The federal agencies have not used this power expansively, though it would appear to be available to recoup overcharges in Section 2 or other cases.105

The cures envisaged by many of the advocates of change call for the bold application of the full portfolio of civil remedies, including unwinding past mergers, divestment of assets, restructuring concentrated markets, limiting or reversing vertical integration or through the imposition of licensing obligations. Such advocates thus wish the DOJ and FTC to use the antitrust laws as an effective and simple mechanism for deconcentrating both monopolistic and oligopolistic markets, rapidly introducing new competition into a market; and reversing what they consider to be severe structural problems that have been allowed to develop on the market.106

Structural remedies, in particular, have always been a real and important part of the antitrust remedial arsenal,107 not only in merger cases where a violation of the antitrust rules may consist of an unlawful acquisition of shares or stock108 but also in Sherman Act cases.109 In the 1960s the FTC also sought, using its powers under Section 5 FTC Act to deconcentrate the petrol and breakfast cereal markets110 and in 1969 the Neal Report,111 commissioned by President Lyndon Johnson, proposed the adoption of laws which would allow oligopolistic industries to be deconcentrated and the condemnation of mergers on markets that were already concentrated.112

Modern antitrust has, however, had less appetite for the use of antitrust to break up companies. Although the District Court in United States v Microsoft Corp 113 ordered, at the request of the DOJ, that Microsoft be broken into two parts, the Court of Appeals, despite affirming the violation of section 2, reversed and remanded the finding that Microsoft should be split into two. Setting out a high bar for structural relief, the Court stressed that the lower court had not (1) held a remedies-specific hearing114 or (2) provided adequate reasons for the decreed remedies.115

A number of factors seem responsible for the trend away from structural remedies. First, the change in antitrust thinking that has evolved since the early 1970s, from a belief that antitrust intervention and structural remedies can improve performance116 to the current more laissez-faire one.117 Second, concerns about the effectiveness of previous attempts to deconcentrate industries,118 especially given the length of time that antitrust proceedings take.119 Third, the difficulty involved in constructing and overseeing a structural remedy effectively. Although in cases involving a merger or acquisition it may be relatively easy to structure such a remedy through disentangling assets that were once owned separately,120 outside of this situation, the question of how and what to divest might be much more speculative, seem much more risky and may in fact be complex and difficult to administer (involving significant restructuring, separation of physical facilities, and allocation of staff from integrated teams).121 These types of concern make it a challenge to persuade a court that a structural remedy is warranted and will be successful in achieving its objective.122

In the discussion above, we have been addressing the types of remedies that are imposed at the conclusion of a lawsuit. A problem in highly dynamic markets, however, is that the lag between the initiation of a case and a final order on relief may be so great that market circumstances have changed dramatically or the victim of allegedly improper exclusion may have left the market or otherwise lost its opportunity to expand and contest the position of the incumbent dominant firm. In this context, the antitrust cure arrives far too late to protect competition. The relatively slow pace of antitrust investigations and litigation (with appeals that follow an initial decision) has led some observers to doubt the efficacy of antitrust cases as effective policy-making tools in dynamic commercial sectors.

There are at least five possible responses to concerns about the speed of antitrust litigation, particularly matters involving dominant firms. First, agencies could experiment with ways to accelerate investigations, and courts could adopt innovative techniques to shorten the length of trials. In the United States, we perceive that greater integration of effort among the public agencies would permit the more rapid completion of investigations (e.g., by pooling knowledge and focusing more resources on the collection and evaluation of evidence). Courts could use methods tested with success in the DOJ prosecution of Microsoft in the late 1990s to truncate the presentation of evidence. These types of measures have some promise to bring matters to a close more quickly.

Second, the initiation of a lawsuit could be recognized as being, in some important ways, its own remedy; the prosecution of a case by itself causes the firm to change its behavior in ways that give rivals more breathing room to grow. Moreover, the visible presence of the enforcement authority, manifest by its investigations and lawsuits, causes other firms to reconsider tactics that arguably violate the law. Seen in this light, the entry of a final order that specifies remedies may not be necessary for all instances to have the desired chastening effect.

A third response is to experiment more broadly with interim relief that seeks to suspend certain types of exclusionary conduct pending the completion of the full trial.123 Effective interim measures would require the enforcement agency to develop a base of knowledge about the sector that enables it to accurately identify the practices to be enjoined on an interim basis and to give judges a confident basis for intervening in this manner.

A fourth approach would be that the remedies achieved in protracted antitrust litigation may not be so imperfect or untimely as they might appear to be. There have been a number of instances in which the remedy achieved in a monopolization case was rebuked as desperately insufficient when ordered but turned out to have positive competitive consequences.124 This is a humbling and difficult aspect of policy making. It may not be easy for an agency to persuade its political overseers—or other external audiences—that the chief benefits of its intervention will emerge in, say, two or three decades. Yet the positive results may take a long time to become apparent.

A fifth technique would be to rely more heavily on ex-ante regulation in the form of trade regulation rules that forbid certain practices. A competition authority—most likely the FTC—would use its rulemaking powers to proscribe specific types of conduct (e.g., self-preferencing by dominant information services platforms).

In this article, we do not purport to solve the problems of the remedial design set out above. There is, however, a fairly clear conclusion about how enforcement agencies should go about thinking of remedies. As we note below, there is considerable room for public agencies to design remedies more effectively by systematically examining past experience and collaborating with external researchers to identify superior techniques. In this regard, the FTC’s collection of policy tools would appear to make it the ideal focal point for the development of more effective approaches to remedial design.

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

### Garland

#### DOJ fails

Brown 21 (Krista Brown, Senior Policy Analyst at the American Economic Liberties Project, former research associate at Open Markets Institute, helped draft amicus briefs in support of FTC’s suit against Qualcomm, BA economics, concentration in mathematics, Colby College; Pat Garofalo, Director of State and Local Policy at AELP; Lucas Kunce, Director of National Security Policy at AELP; Sarah Miller, Executive Director at AELP; Matt Stoller, Director of Research at AELP; Matt Buck, Kalen Pruss, Reed Showalter, and Olivia Webb, Fellows at AELP; “The Courage To Learn: A Retrospective on Antitrust and Competition Policy During the Obama Administration and Framework for a New, Structuralist Approach,” American Economic Liberties Project, January 2021, https://www.economicliberties.us/wp-content/uploads/2021/01/Courage-to-Learn\_12.12.pdf)

However, the USDA caved to industry and congressional pressure at critical moments, stalling and diminishing a promising slate of reforms. At the DOJ, despite powerful rhetoric from its leaders, the final report from its Antitrust Division disavowed much of a role for antitrust enforcement in addressing meatpackers’ and other agribusinesses’ enormous power. The administration eventually passed watered-down PSA rules in 2016 just before leaving office. All the while, DOJ failed to bring any significant cases against agribusiness after collecting ample evidence of illegal and unfair conduct from farmers, quietly closed an investigation into the seed and agrichemical industry, and even filed a legal brief in court supporting Monsanto’s ability to control farmers’ seed use.

### AT: No Confirmation – Committee Will Deadlock Again

#### The Commerce Committee vote is irrelevant – they ARE expected to end up in another 14-14 tie like in December – BUT this time, he’ll get a floor vote using a discharge petition – that floor vote is all that matters

ACA 2-1-22 (ACA International, The Association of Credit and Collection Professionals, “FCC and FTC Nominations Delayed,” 2-1-2022, https://www.acainternational.org/news/take-two-on-fcc-and-ftc-nominations/)

The Senate Commerce Committee, led by U.S. Sen. Maria Cantwell, D-Wash., was also slated to consider the nomination of Alvaro Bedoya to serve on the Federal Trade Commission during the Feb. 2 hearing. Bedoya was nominated in place of Rohit Chopra after he started his term as director of the Consumer Financial Protection Bureau.

The committee did vote on his nomination in December, but along party lines, according to Politico.

“The committee deadlocked along partisan lines when it voted on him in December, with every Republican siding against,” according to the article. “He could still advance to the floor with unified Democratic support, but Democrats would need to find the time for three roll call votes. (In addition to cloture and confirmation votes, Bedoya would need one simply to discharge him from the Senate Commerce Committee—and that adds up to a lot of floor time.)”

Those who are in favor of Khan’s antitrust agenda said they are optimistic that Chopra’s replacement, Bedoya, will be confirmed soon by the Senate and that much of the Democratic agenda will proceed even without them being in the majority in the coming weeks or months.

“It’s true that the FTC won’t hold a lot of votes during this time and it’s important to move quickly to get Bedoya confirmed, so we can start having important votes again,” said Charlotte Slaiman, head of competition policy at open internet advocacy group Public Knowledge.

### AT: No Confirmation – Vote Cancelled / Luján

#### The committee vote this week was pulled because a Dem Senator had a stroke and they need his vote – it only proves they think they’ll have the votes once he’s back – AND that every vote is key

Wyrich 2-2-22 (Andrew Wyrich, deputy tech editor at the Daily Dot, “FCC, FTC votes delayed after senator’s stroke prevents Dems from approving nominees,” Daily Dot, 2-2-2022, https://www.dailydot.com/debug/fcc-ftc-gigi-sohn-alvaro-bedoya-votes-pulled/)

The Senate Commerce Committee announced late on Tuesday that it had pulled the scheduled votes on the nominations of Gigi Sohn to the Federal Communications Commission (FCC) and Alvaro Bedoya to the Federal Trade Commission (FTC).

Sohn and Bedoya, both of whom would give their respective agencies a 3-2 Democratic majority, were scheduled to have their votes before the Senate Commerce Committee today.

A committee spokesperson said the votes were pulled after Sen. Ben Ray Luján (D-N.M.), one of the members of the Senate Commerce Committee, suffered a stroke last week. Luján is expected to make a full recovery.

The 28-member Senate Commerce Committee is split evenly between Democrats and Republicans. Both Sohn and Bedoya will almost assuredly need all of the Democratic votes on the committee to advance to a full vote in the Senate, meaning going forward with a vote with Lujan’s absence risked not having the necessary votes to advance the two nominees.

The spokesperson said today’s schedule “has been recalibrated to take into consideration the need for all Democratic votes in order to move certain nominees,” noting that “the speedy recovery of Sen. Lujan remains [our] first and foremost priority.”

Sohn and Bedoya both had confirmation hearings last year. While the Senate Commerce Committee voted on Bedoya’s nomination, landing on a 14-14 tie, they never held a vote for Sohn. Bedoya’s nomination was sent to the full Senate, but never was taken up for a vote.

Because of that, President Joe Biden needed to re-nominate both of them for the FCC and FTC roles earlier this year.

If they are confirmed, both Sohn and Bedoya would give the FCC and FTC Democratic majorities. That would allow the FCC to tackle a number of issues that would require a party-line vote, such as restoring net neutrality rules and authority over the broadband industry. Meanwhile, the FTC could start a rulemaking process on issues like data privacy and facial recognition.

The Senate Commerce Committee spokesperson did not say when they were aiming to reschedule votes for Sohn and Bedoya.

Craig Aaron, the co-CEO of Free Press Action, called the votes being pulled “disappointing” in a tweet on Tuesday evening.

“Disappointing because these highly qualified nominees should have sailed through months ago. Further delay just keeps these essential agencies from getting to work,” Aaron tweeted.

### Uniqueness – T/L

#### AND…

Ownbey 2-2-22 (Austin A.B. Ownbey, counsel in Foley Hoag's Business Department, practice focuses on antitrust defense, JD University of Michigan Law School, “Cybersecurity 2022 – The Year in Preview: Privacy Regulations at the FTC,” JD Supra, 2-2-2022, https://www.jdsupra.com/legalnews/cybersecurity-2022-the-year-in-preview-5608106/)

As we think about what 2022 may hold with regard to privacy and data security regulation by the Federal Trade Commission (FTC), we should first look back at some of the developments from last year that set the stage for this year. Just like 2021, it appears that the regulatory culture at the FTC this year will be heavily entangled with the political environment. Recent events suggest that while privacy and data security related reforms previously enjoyed bipartisan support, there are limits to that bipartisanship and not everyone agrees on the FTC’s role in crafting new privacy and data security regulations. One thing that remains to be seen is will the partisan disagreements derail the FTC’s efforts to draft new regulations or will the FTC press ahead anyway.

The Politics of Filling the Fifth Seat

To start the new year, President Biden renewed his nomination of Alvaro Bedoya, founding Director of the Center on Privacy & Technology at Georgetown Law School, to fill the vacancy at the FTC created by Rohit Chopra’s departure last year to take over as Director of the Consumer Financial Protection Bureau. The nomination had to be renewed because it hit an unexpected delay at the end of last year in the Senate Commerce Committee, when what many expected to be an unremarkable vote, instead turned out to be a party line vote with all of the Republicans voting against Bedoya’s nomination.

Earlier in the year, during Bedoya’s confirmation hearing, only a handful of Republicans expressed concern over his nomination and most Senators appeared content with Bedoya’s privacy expertise. Among those who expressed concern at the hearing was Sen. Ted Cruz (R-TX) who criticized Bedoya for tweets that Cruz insisted show Bedoya to be “a left-wing activist, a provocateur, a bomb thrower, and an extremist.” Despite these accusations, Bedoya repeatedly expressed his support for collaboration and highlighted his previous bipartisan successes as a Senate staffer, but that was apparently insufficient in assuaging the concerns because no Republicans voted in favor of confirmation and the committee deadlocked at 14-14.

After the vote, the Committee’s ranking member, Sen. Roger Wicker (R-MS), echoed Sen. Cruz’s concerns when he summed up the opposition to Bedoya by stating that there “has been a troubling trend of politicization at the FTC, which is different from how it has been in previous years.” Sen. Wicker went on to express a concern that Bedoya may not bring “the cooperative spirit to the commission” that has historically set the FTC apart from other agencies.

The deadlocked vote is even more remarkable when considering that Chair Khan, who has since become a source of controversy during her tenure at the FTC, was voted out of the same committee and confirmed by the full Senate earlier this year with significant Republican support. (Only four Republicans on the Commerce Committee voted against sending her nomination to the full Senate and 22 Republicans ultimately voted in favor of her confirmation.) However, now that Bedoya’s nomination has been renewed and despite a delay caused by the need for an extra procedural vote to clear the full Senate, his nomination is not dead. Since the Democrats control the Senate, Bedoya is still likely to be confirmed early this year.

The Winds of Change at the FTC

This shift towards partisanship is another signal that support for new federal privacy and data security regulations, which once seemed unified and bipartisan, may become a victim of the partisan divide. But the deadlocked vote over Bedoya’s nomination was not the first sign of trouble. Instead of a bipartisan Commission unified in its goal “to engage in sound, vigorous privacy and data security enforcement,” Bedoya may be joining a Commission already divided by partisan conflict over the very nature of what privacy and data security enforcement should look like.

### AT: USDA Solves

#### USDA fails – capture ensures circumvention

OCM 20, Organization for Competitive Markets, 08/24/20, Captured: How Agribusiness Controls Regulatory Agencies and Harms Producers and Consumers, https://competitivemarkets.com/wp-content/uploads/2020/08/Regulatory-Capture-Paper\_Final.pdf

Introduction

When Georgia Governor Sonny Perdue was nominated to be U.S. secretary of agriculture, American family farmers who had believed in President Trump’s promises to “drain the swamp” and protect domestic agriculture felt a surge of disappointment. Secretary Perdue had spent his career in government advocating for and benefiting from the interests of Big Ag. With Perdue at the helm of the U.S. Department of Agriculture (USDA), what checks and balances would exist in the federal government to counteract the consolidation, collusion, and corruption that have become customary in the U.S. agriculture economy?

Thomas Jefferson had foreseen America as a democratic republic of small farmers. Sadly, “we the farmers” now have little or no say in a government that was constituted to represent us. The America that existed as an agrarian utopia of regulated fair-market capitalism in the mind of Jefferson has become a very different America: one where the federal government is neither limited nor limiting, but instead allows corporations to influence policy, aided and abetted by despotic regulators and enforcers motivated by self-interest.

How did the federal government come to support international conglomerates instead of hardworking American farmers? In Congress, the clearest way government supports the interests of the powerful is with the money spent by lobbyists and given to politicians through campaign contributions. In the executive branch, where policy makers are appointed rather than elected, the interests of Big Ag predominate when governmental appointees are “captured” by the industry. Executive branch regulatory capture is the topic of this report.

Secretary Perdue is just one example of regulatory capture, whereby government officials tasked with enforcing laws for all choose to support the private interests of a few. From top to bottom, USDA is rife with petty and personal corruption. An April 2019 investigation described a conversation with a USDA official about the Food Safety and Inspection Service (FSIS). The official noted rather straightforwardly that “large meat producers like Cargill, Tyson, Smithfield, Swift (JBS) and Sanderson Farms are often given a ‘pass’ thanks to their high-paid lobbyists.”1 The anonymous whistleblower further characterized USDA as an old boys club with a revolving door “between the USDA and FSIS, and the captains of the meat industry.” Through repeated gifts of pro-corporate policy making, nonenforcement, and deregulation, the refrain is indisputable: the USDA advocates for special interests

and ignores ordinary people for financial reasons.

Free-market capitalism relies on government to create a level playing field that encourages entrepreneurship. However, free-market capitalism and what President Reagan called “the magic of the market” cannot function as intended when government enforcers are captured and special interests tilt the playing field away from working people.

The Organization for Competitive Markets (OCM) advocates for the rights of family farmers, and we support fighters like Connie and Jonathan Buttram who want to make a living free from government and industry coercion. Their stories and those of people like them compel action and inspire hope.

The people at the top of the federal government are not an anonymous mass of bureaucrats; they are individuals like Sonny Perdue, who make decisions that have pernicious consequences for people like Connie and Jonathan Buttram. When OCM, and thousands of other groups and individuals, reach out to our representatives so family farmers like the Buttrams can have a fighting chance, we are merely ignored, time and again.

This report describes how the executive branch of the federal government supports policies contrary to the interests of American family farmers by installing “captured” bureaucrats in positions of power.

Section I – Passing Through the Revolving Door

Brink Lindsey and Steven Teles define regulatory capture as “private industries co-opt[ing] governmental power for their own competitive benefit.”2 A quintessential example is “the revolving door,” wherein decision makers cycle from government positions to the industries they regulate and back again. Along the way, these individuals adopt attitudes and beliefs that benefit their position in that particular private business, which, of course, they will soon rejoin upon completion of their putatively “public” service. This cycle is all the more insidious for the omnipresent promise of higher pay in the private sector. Hence, there is continuing economic pressure through which personal self-interest morphs through a wink and a nod into the self-interest of the private company. In the wake of such lucrative paydays, family farmers cannot compete for the attention of public officials who favor personal wealth over public service.

The USDA is more prone to regulatory capture than many other agencies because “the USDA provides grading, certification and verification services intended to improve agricultural companies’ marketing of a variety of farm products.”3 This makes the agency, and especially certain oversight mechanisms within it, dependent on the industry they work with through user fees and a broader mission to promote the agricultural industry. 4 Similarly, there are a limited number of people with the requisite technical skills necessary to hold high-level regulatory jobs, and one way to get such experience is through private industry. The intertwining of USDA with private industry is to some degree inevitable; nevertheless, this does not excuse the brazen self-dealing we explore in the following sections.

### AT: Confirmation Inevitable

### AT: Thumper – T/L

#### NO thumpers – deadlock forces restraint – which necessarily prices in ANY and ALL prospective controversies from the existing agenda, because NONE OF IT has actually been enforced yet, which is the whole point

Hoffman 1-11-22 (D. Bruce Hoffman, partner at Cleary Gottlieb, practice focuses on antitrust enforcement, former Director of FTC’s Bureau of Competition, JD University of Florida Levin College of Law; and Henry Mostyn, partner at Cleary Gottlieb, practice focuses on EU and UK competition law, BPP Law School – London; “U.S. & EU Antitrust: Developments and Outlook in 2022,” 1-11-2022, https://www.clearygottlieb.com//news-and-insights/publication-listing/us-eu-antitrust-developments-and-outlook-in-2022)

The FTC in 2021 was characterized by staff and leadership turmoil, controversy and at least the appearance of a significant shift in agency priorities and practices. Initially, under Acting Chair Slaughter, the FTC largely continued its longstanding consensus-driven approach to antitrust, albeit with some aggressive statements on various issues from the Acting Chair and fellow Democratic Commissioner Rohit Chopra. That approach changed substantially with Lina Khan’s ascension to the position of FTC Chair.

Khan, a headliner antitrust progressive most famous for her criticism of Amazon and of the view that antitrust should focus on protecting consumers from higher prices or reduced output, was originally nominated by the President to be a Commissioner; no mention was made of her being Chair. Yet, to the surprise of observers and (as we understand it) much of the Senate, immediately after she was confirmed as a Commissioner the President designated her as Chair – an important distinction, because the FTC Chair controls the day-to-day administration of the FTC. Khan, with a three-Commissioner majority, moved swiftly to alter FTC practices in several areas:

Streamlining the process of adopting trade regulation rules and initiating discussion of several possible rules, notably including unprecedented rules on competition (such as on exclusive contracts, discounts and other widespread contractual practices)

Streamlining procedures for issuing compulsory process and eliminating the normal requirement of Commission votes for process in a wide range of cases

Rescinding longstanding bipartisan FTC guidance on antitrust enforcement to reflect a more regulatory, aggressive philosophy

Withdrawing from the recently adopted Vertical Merger Guidelines, leaving the FTC differently situated from the DOJ and with no clear guidance on vertical mergers.

Interestingly, though, these and other aggressive steps were not accompanied by an uptick in case filings (either initially under Acting Chair Slaughter or subsequently under Chair Khan); in fact, FTC case filings declined from the levels set under the Trump administration.

In any event, following this initial spate of activity, the progressive agenda has been slowed by the departure of Commissioner Chopra to serve as Director of the Consumer Financial Protection Bureau. While Commissioner Chopra cast a number of so-called “zombie votes” enabling the Commission to move forward on a limited number of issues after his departure, the Commission now has only four Commissioners, and so any controversial steps will have to wait until another Democratic Commissioner is confirmed, since the two Republicans can block new Commission actions they don’t support.

As a result, Commission action in the near future will either involve consensus

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– such as the study of supply-chain disruptions launched in December 2021, or the recently-filed challenge to the merger of NVIDIA and Arm – or areas in which the Chair and Bureau Directors can act without a vote, such as in issuing Second Requests triggering in-depth reviews of mergers (but actual challenges to mergers or consent decrees will require Commission votes, and thus at least some Republican support).

The President has nominated Alvaro Bedoya, a Georgetown law professor and privacy expert, to the Commission; however, his nomination (though supported by all four current FTC commissioners) drew significant opposition in the Senate and failed to advance in 2021. The President has just renominated Bedoya, re-starting the confirmation process. While we think it is still more likely than not that he will be confirmed, it may take several months for the process to play out.

So what will we see from the FTC in 2022? Initially, enforcement action in the form of consent decrees and litigated cases will likely be limited to consensus cases, given the 2-2 Commission split. Chair Khan has used the tools at her disposal to delay the review of some mergers, to launch full Second Request investigations of mergers that on their face don’t appear to raise competition issues and to issue threatening-sounding though legally insubstantial letters to merging firms reminding them that HSR clearance doesn’t mean that the merged firm is immune from antitrust scrutiny. We expect those trends to continue, even if they don’t result in enforcement action in the near term. While FTC staff has been subjected to a gag order and barred from public speaking since Chair Khan’s arrival, limiting insight into the FTC’s position and practices, we expect the limited public statements from the FTC to continue pushing for a progressive agenda. This will likely include criticizing large firms, touting the virtues of deconcentrating markets and expressing a general skepticism of mergers.

### AT: No Solve Industrial Ag

#### BUT, it’s NOT just meatpacking – confirmation means Biden’s XO will be implemented, solving ag consolidation broadly

Shankar 21 (Vishal Shankar, Research Assistant with the Revolving Door Project, BA political science and economics, University of California-Berkeley, “Biden's Executive Order Promises Relief For Farmers. Will It Deliver?” Revolving Door Project, 7-29-2021, https://therevolvingdoorproject.org/bidens-executive-order-promises-relief-for-farmers-will-it-deliver/)

Earlier this month, President Biden signed a landmark executive order (EO) aimed at taking on concentrated corporate power. The order takes a sweeping “whole of government” approach to promoting competition, with crucial provisions to allow the importation of generic prescription drugs, ban anti-worker non-compete agreements, lower the cost of internet access, and more.

Of particular importance are the order’s provisions relating to farmers and agriculture, an oft-overlooked sector when it comes to monopoly power. Biden’s EO acknowledges the unprecedented control over agricultural markets that companies like Monsanto now enjoy. The EO also directly addresses some of the biggest competition-related concerns held by family farmers and lays out an encouraging roadmap for executive branch anti-monopoly action.

This EO follows months of pressure from public interest groups urging Biden to make bolder use of his executive powers and staff the executive branch with personnel who will put the public interest ahead of corporate profits. While the order represents a milestone moment in Biden’s presidency, major gaps in executive branch staffing and potential complacency by progressives could undermine its sweeping promises.

What’s In The Executive Order?

Biden’s EO contains several provisions with particular importance to farmers and agricultural workers.

First, it directs leading antitrust enforcement agencies like the Department of Justice (DOJ) and Federal Trade Commission (FTC) to “enforce antitrust laws vigorously” and “recognize that the law allows them to challenge prior bad mergers that past Administrations did not previously challenge”. If heeded by regulators, this directive would lead to the reversal of monopoly power held by Big Ag giants like Monsanto and Tyson Foods that has caused thousands of farmers to grapple with higher input costs and reduced market share. The EO’s faulting of “past Administrations” is also a notable and welcome break with the past, as the Trump years saw regulators approve landmark anti-competitive mergers pursued by Monsanto, Tyson, and other Big Ag companies. This guidance is also an implicit rebuke of the Obama administration’s approach to Big Ag, which saw then-Agriculture Secretary Tom Vilsack cheer on corporate consolidation and the DOJ’s Antitrust Division “not [file] a single amicus brief from 2009 to 2016” challenging an agriculture-related merger.

The EO also encourages the FTC to end “unfair anticompetitive restrictions on third-party repair or self-repair of items” such as farming equipment. This push to establish farmers’ “right to repair” could end a years-long battle between farmers and equipment manufacturers over the latter’s monopolization of the repair industry. As VICE News reported in 2018, equipment manufacturers like John Deere often require farmers to agree to onerous software license agreements and the use of proprietary parts in machinery repair, granting these companies an artificial monopoly over the repair market. Family farm and consumer advocates have fought these rules for years, arguing that they cost small farmers their time, money, and agency. Biden’s embrace of right-to-repair — a policy that only former rivals Bernie Sanders and Elizabeth Warren had endorsed during the 2020 primary — could end this exploitation by requiring equipment manufacturers to make internal repair guides public, make repair parts and tools more broadly available and affordable, and end the use of software locks.

The US Department of Agriculture (USDA) is also a notable area of focus for the EO, which directs the agency to enact rules and development plans to help balance the playing field between family farmers and Big Ag monopolies. One provision follows recent developments at the FTC and USDA and orders the latter to consider new rules “defining when meat can bear ‘Product of USA’ labels”, a major victory for American livestock and poultry producers who have correctly argued that the current rules unfairly permit multinational meatpacking companies to label products derived from animals born and raised abroad (but processed inside the U.S.) as “Made in the USA.” As antitrust expert Matt Stoller has noted, “Made in the USA” mislabeling regularly “allows meatpackers to drive down the price paid to domestic ranchers, because they can deceptively market beef from Brazil as American beef.”

Another provision urges USDA to issue new rules under the Packers and Stockyards Act — the 1921 law designed to combat excessive concentration and unfair practices in the meat industry — that crack down on the exploitation of chicken farmers, make it easier for independent farmers to file claims, and adopt anti-retaliation protections for whistleblowers who speak out against bad practices. This trio of proposed rules received widespread praise from groups like Ranchers Cattlemen Action Legal Fund, who commended the Biden administration for being “the first administration to actually take action” on the law’s enforcement over the past 20 years.

A third USDA directive in the EO encourages the agency to promote competition in agricultural markets by increasing opportunities for small farmers to access retail markets, supporting alternative distribution systems like farmers markets, and developing transparent labeling standards to help consumers choose products. The USDA has already promised quick action on this directive, pledging this month to invest $500 million in American Rescue Plan funds to “expand processing capacity and increase competition in meat and poultry processing.”

Personnel Is Policy: How Progressive Oversight Led To Biden’s EO

Biden’s EO is a landmark moment for antitrust, but not one that arose out of thin air. As the Christian Science-Monitor chronicled earlier this month, progressive antitrust groups and good-government watchdogs (including the Revolving Door Project) have been organizing since last summer to ensure that a Biden administration would not be staffed with corporate insiders monopoly allies.

On antitrust appointments, they have largely succeeded. The appointments of Tim Wu (a leading anti-monopolist who coined the term “net neutrality”) to the NEC and Lina Khan (a prolific critic of the Obama administration’s approach to Big Ag) to the FTC were critical to laying the groundwork for the EO, with Wu having worked on it full-time since being hired by Biden in March. Google adversary Jonathan Kanter is also set to join the Biden administration in the crucial post of Assistant Attorney General for Antitrust, where he would oversee the DOJ’s ongoing lawsuit against Google for engaging in anti-competititve business practices. Without Wu, Khan, Kanter, and other anti-monopolists like NEC Deputy Director Bharat Ramamurti in the administration, it’s hard to imagine Biden making such a sweeping break from his predecessors on antitrust enforcement.

Scrutiny of Biden’s more problematic hires has also yielded results. Take Agriculture Secretary Tom Vilsack, who spent his first stint at USDA appointing Monsanto-connected executives to agency jobs and rolling back regulations and antitrust enforcement on Big Ag companies. Alongside groups like People’s Action, we opposed Vilsack’s nomination from the outset due to his industry-friendly record and subsequent career as a lobbyist for Big Dairy.

While Biden’s decision to have Vilsack return to USDA was disheartening (particularly given a superior alternative candidate for the job), continued pressure on Vilsack to staff the department with family farm advocates led to some promising hires. Andy Green, a former aide to progressive SEC commissioner Kara Stein and Senator Jeff Merkley (a co-sponsor of the Farmers Bill of Rights resolution), is one such example. Green was hired in March to serve as Vilsack’s senior adviser on fair and competitive markets, and has regularly met with groups like Family Farm Action, Open Markets Institute, and Friends of the Earth to meaningfully integrate progressives’ concerns about unchecked corporate power into USDA’s activities. Under his watch, USDA has made remarkable progress towards turning the page on the Obama and Trump eras, pledging its resources towards expanding competition and fair labeling standards.

Vilsack has also responded to civil and farmers rights groups outraged at his past handling of USDA discrimination against black farmers, appointing former National Family Farm Coalition treasurer Monica Rainge as Deputy Assistant Secretary for Civil Rights. Rainge, whose most recent work entailed supporting socially disadvantaged farmers and ranchers, stands alongside Green as an example of how sustained progressive pressure has moved one of Biden’s most corporate-friendly Cabinet picks in a positive direction on personnel and policy.

Follow-Through Matters: Actions Speak Louder Than Words

Biden’s EO swings for the fences in its ambition, but whether it succeeds will come down to the administration’s follow-through. On several occasions — such as the vaccine TRIPS waiver and Yemen War announcements — Biden has undermined bold policy promises with insufficient or contrary follow-up action. Concerningly, this latest EO is merely suggestive in much of its language (an agency “shall consider” or be “encouraged”) and delegates the responsibility for next-steps to various executive agencies.

Here, key staff vacancies could severely undermine the EO.

For example, as The American Prospect’s Alex Sammon noted, much of the potential of a Khan-led FTC will be unrealized if Biden leaves the agency paralyzed in a 2-2 partisan deadlock following the upcoming departure of Commissioner Rohit Chopra. Vacancies will plague USDA as well, as Biden lags well behind Obama in his pace of staffing the agency. Top positions in the Civil Rights, General Counsel, Risk Management, and Farm Service divisions remain unfilled, while nearly every state-level office in USDA’s Rural Development division — a key point of contact between the agency and rural communities — lacks a full-time director. Given the crucial duties handled by these divisions (which include ensuring compliance with federal anti-discrimination laws, providing federal crop insurance, and administering farm aid and credit programs), Biden must fill these vacancies without delay and urge his party to do whatever it takes to expedite Senate confirmations.

# 2NR

## DA---Bedoya

### AT: Industrial Ag Good

#### Big ag crowds out small farms that lead innovation

UCS 21—(nonprofit science advocacy organization). Union of Concerned Scientists. April 14, 2021. “Bigger Farms, Bigger Problems”. <https://www.ucsusa.org/resources/bigger-farms-bigger-problems>. Accessed 7/15/21.

Consolidation means exclusion

There are multiple reasons why we should be concerned about increasing consolidation. For one thing, larger farms mean that fewer people can be farmers. Consolidation operates to make farming a more exclusive club—and this has the largest impact on groups that are already underrepresented.

Our study focused on how consolidation may be driving exclusion from farming for two populations: new farmers, focusing on the Midwest, and Black farmers, focusing on the 16 states with the largest number of Black farmers in 2017.

Barriers to new farmers (and new ideas)

The energy, innovation, and initiative that new practitioners bring are crucial to the future of any profession—and farmers are no different. Our food system is going to be facing huge challenges over the coming decades, and we need an expanding, diversifying, creative community of farmers to meet those challenges. Consolidation operates in exactly the wrong direction.

During the study period, the proportion of new farmers in the US fell, and the average age of farmers rose—especially in the Midwest, where the proportion of new farmers shrank by nearly one-third and their average age rose by a decade.

Both trends were more pronounced in counties where consolidation was happening fastest: in these counties, the share of new farmers declined 56 percent faster, and average farmer age rose 26 percent faster.

#### Their evidence is industry propaganda that you should disregard

Ikerd 17 – John E. Ikerd, 5/31/2017. Professor Emeritus of Agricultural & Applied Economics University of Missouri Columbia. College of Agriculture, Food and Natural Resources. “Our Chemical-Dependent, Profit-Driven, Industrial Ag Complex is Not Going Quietly,” In These Times, http://inthesetimes.com/rural-america/entry/20177/farm-policy-corporate-power-industrial-agriculture-sustainablity-nixon.

In an attempt to stem the tide of growing public concern, the industrial agricultural establishment has mounted a nationwide propaganda campaign designed to, in their words, “increase confidence and trust in today’s agriculture.” The board members of one front group, the U.S. Farmers and Ranchers Alliance, include the American Farm Bureau Federation, John Deere as well as major agricultural commodity organizations. Board members Monsanto and DuPont have each pledged $500,000 per year to the campaign.

A recent study by Friends of the Earth, an international network of environmental organizations, documents similar “front groups” that have been spending more than $25 million per year to polish the tarnished public image of industrial agriculture. This doesn’t include the campaigns of individual industrial agricultural apologists that are carried out through public schools, 4-H and Future Farmers of America, local civic clubs, and state and local mass media. That said, the agricultural establishment seems to consider their PR campaign as little more than a “holding action” against growing public concerns. They are using their political power to establish legislative protections that would prevent effective regulation.

All 50 states already have some form of right-to-farm law, but they must be strengthend. The early laws, beginning in the 1980s, were enacted to minimize the threat to nuisance litigation and prohibitive state and local government regulation of “normal farming practices.” Current political initiatives, however, allow the agricultural establishment to define “industrial farming practices” as a legally protected economic right. Industrial agriculture's advocates know it's vulnerable to growing public concerns and they're doing everything in their power to protect it.

The agricultural establishment has essentially abandoned their earlier strategy for demanding that regulation of industrial agriculture be based on “sound science.” They seem to understand that the scientific evidence supporting the growing public concerns is now clear, compelling, even overwhelming. I personally think it has become misleading to cite a few specific studies when there is so much scientific information documenting the environmental, social, economic, and public health problems associated with industrial agriculture. I have started relying on meta-studies, where scientists or teams of scientists review dozens or hundreds of credible studies and draw logical, generalizable conclusions.

### AT: Thumpers

#### If it’s controversial enough with Senate centrists to trigger our link, then it won’t happen, and everyone knows it due to public Commissioner dissents – if it IS going to happen, then it won’t be controversial OR will have been sufficiently watered down through the process of making it past deadlock to ensure it does NOT link – only plan changes that dynamic by fiating through Republican Commissioners’ objections

Conley et al 1-19-22 (Stephen Conley, Associate at Wiley Rein LLP, former Law Clerk at the FCC, JD George Washington University Law School; Duane Pozza, Partner at Wiley Rein LLP, former FTC Assistant Director of the Bureau of Consumer Protection, JD Stanford Law School; Kathleen Scott, Partner at Wiley Rein LLP, JD American University Washington College of Law; “’An Avalanche of Rulemakings’ – The FTC Gears Up for an Active 2022,” Privacy In Focus, JD Supra, 1-19-2022, https://www.jdsupra.com/legalnews/an-avalanche-of-rulemakings-the-ftc-1324181/)

FTC Commissioner Christine Wilson dissented from the Annual Regulatory Plan, arguing that it “extends far beyond” the agency’s routine review of existing rules and that many of the existing rules “should be abolished in any event.”[6] She further characterized the Annual Regulatory Plan as ushering in “an avalanche of rulemakings” and rejected Chair Khan’s depiction of the economy as being “hyper-concentrated.”[7] Indeed, in a subsequent statement made at the agency’s December 16 Open Meeting, Commissioner Wilson referred to the FTC’s 2022 agenda as a “Rule-a-Palooza.”[8] Commissioner Wilson’s dissent signals likely uniform Republican Commissioner opposition to most of the agency’s planned rulemakings, leaving the body in a 2-2 Democrat-Republican split on many of the proposals. That said, proposals like the Safeguards Rule SNPRM have drawn some bipartisan support and may point to some additional rulemaking even without a fifth Commissioner.

Much of the FTC’s Expansive Rulemaking Agenda Likely Hinges on Confirmation of a Fifth Commissioner

President Biden originally nominated Alvaro Bedoya on September 13, 2021 to fill the FTC Commissioner seat vacated by former Commissioner Rohit Chopra upon his confirmation as Director of the Consumer Financial Protection Bureau on September 30. Bedoya is the founding director of the Center on Privacy & Technology at Georgetown Law and previously served as the first Chief Counsel to the U.S. Senate Judiciary Subcommittee on Privacy, Technology and the Law. He faced opposition from Republican senators on the U.S. Senate Committee on Commerce, Science, & Transportation (Committee) during his November 17, 2021 confirmation hearing, but President Biden renominated him to the FTC Commissioner spot on January 4, 2022. He appears likely to be the swing vote on many of these proposed rulemaking initiatives – not just whether they will go forward, but also their scope and ambition if they do so.

#### Deadlock stalled all controversial agenda items – can’t move without Bedoya

Davis 1-28-22 (Wendy Davis, Senior Writer at MediaPost, “Senate Committee To Vote Wednesday On FTC, FCC Nominees,” MediaPost, 1-28-2022, https://www.mediapost.com/publications/article/370721/senate-committee-to-vote-wednesday-on-ftc-fcc-nom.html)

The Senate Commerce Committee has scheduled a vote for Wednesday on whether to approve the nominations of Gigi Sohn to the Federal Communications Commission and Alvaro Bedoya to the Federal Trade Commission.

President Biden nominated Sohn and Bedoya last year, but the Senate didn't confirm either before the session ended, leaving both the FTC and FCC deadlocked with two Republicans and two Democrats. Until a fifth, tie-breaking commissioner joins both agencies, they're not likely to advance the more controversial items on their leaders' agendas -- including FCC Chair Jessica Rosenworcel's plan to restore the Obama-era net neutrality rules.

#### AND, everyone knows it – perception’s that the entire agenda is now in doubt

Bordelon 2-1-22 (Brendan Bordelon, tech policy reporter, Morning Tech author at Politico, MA International Science and Tech Policy, George Washington University, “House girds for battle on China competition bill- POLITICO | #socialmedia,” National Cybersecurity News Today, 2-1-2022, https://nationalcybersecuritynews.today/house-girds-for-battle-on-china-competition-bill-politico-socialmedia/)

TAKE 2 FOR BEDOYA AT FTC: With Democrats and their allies increasingly anxious over the ongoing failure to secure an FTC majority, on Wednesday the Senate Commerce Committee will vote — again — on privacy advocate Alvaro Bedoya’s nomination to serve as the third Democrat on the Federal Trade Commission.

The do-over comes after the committee split 14-14 on Bedoya’s nomination in December, with every Republican senator voting against the Georgetown Law School professor’s nomination. Several Republicans, including ranking member Sen. Roger Wicker (R-MS), took umbrage at Bedoya’s “divisive” social media presence.

The deadlock would’ve required Sen. Majority Leader Chuck Schumer to expend valuable floor time on a discharge petition to force a floor vote on Bedoya. But Bedoya’s nomination expired before that could take place. Biden renominated Bedoya on Jan. 4, along with Gigi Sohn (her nomination to serve as Democratic commissioner at the Federal Communications Commission will receive its first vote on Wednesday).

— Delays on delays: There’s little indication that Wednesday’s vote will be much different for Bedoya than the one in December. With the Senate already staring down a packed calendar, the prospect of a significant delay on Bedoya’s nomination throws into doubt the ambitious plans rumored to be brewing under FTC Chair Lina Khan’s leadership. In addition to serving as a crucial third Democratic vote, Bedoya — a privacy expert — will likely play a key role in any eventual privacy rulemakings at the FTC.

### AT: Plan Pop

#### Their ev says people don’t like high energy prices – NOT that centrists most vulnerable to new pressure from constituents will be happy with the aff’s expansion of antitrust – that’s Salvino – particularly Manchin

Lord 12-1-21 (Joseph Lord, congressional reporter at Epoch Times, former scholar in the Lyceum Program, BA Philosophy, Clemson University, “Senate Commerce Committee Deadlocks on FTC Pick Bedoya,” The Epoch Times, 12-1-2021, <https://www.theepochtimes.com/senate-commerce-committee-deadlocks-on-ftc-pick-bedoya_4133298.html>

The Senate Commerce Committee deadlocked on a vote to confirm Alvaro Bedoya’s nomination to become one of the Federal Trade Commission’s (FTC) five commissioners.

On Dec. 1, the committee voted 14–14 on the nomination, but under Senate rules, it can proceed to the full Senate for a vote.

President Joe Biden nominated Bedoya in September to join the board of the FTC, which deals primarily with antitrust and consumer protection law.

Bedoya, a Georgetown University law professor, has focused much of his work on the connection between facial recognition technology and civil rights. More specifically, Bedoya has argued that facial recognition technology has often been used in a way that is biased against immigrants and other minorities.

If confirmed, Bedoya would join the FTC under newly installed Chair Lina Khan, and give Democrats a 3–2 majority.

Khan has been outspoken in supporting the use of antitrust law against tech giants. In his role, Bedoya would focus on the FTC’s goal of consumer protection.

Citing Bedoya’s “divisive views,” the committee’s ranking Republican member, Sen. Roger Wicker (R-Miss.), was one of the 14 Republicans to vote against the confirmation. Bedoya’s Twitter page showcases some of these “divisive views.”

On Twitter, Bedoya has given his endorsement to the Immigrant Defense Project, which markets itself as “promot[ing] fundamental fairness for immigrants accused or convicted of crimes.” More specifically, the organization has a focus on illegal and non-naturalized immigrants, describing one of its aims as “working to transform unjust deportation laws and policies.”

Bedoya has also opined on a litany of other issues, including abortion issues and Democrats’ multitrillion-dollar social spending bill.

“I will not vote to report the nomination of Mr. Bedoya to be the commissioner of the FTC,” Wicker said in his opening remarks. “I remain concerned about the frequency with which he has expressed divisive views on policy matters, rather than a more unified and measured tone.

“There has been a troubling trend of politicization at the FTC, which is different from how it has been in previous years. I fear Mr. Bedoya would not bring the cooperative spirit to the commission that we need at this time.”

Later in the session, Sen. Amy Klobuchar (D-Minn.) called for a vote on Bedoya’s nomination.

The committee, composed of 14 Democrats and 14 Republicans, voted along party lines. Even Sen. Kyrsten Sinema (D-Ariz.), who has struck a moderate tone against fellow Democrats on several occasions, joined with the party to vote for the nomination.

Given the current composition of the Senate, evenly split between 50 Democrats and 50 Republicans, Senate Majority Leader Chuck Schumer (D-N.Y.) and Minority Leader Mitch McConnell (R-Ky.) put in place a new procedural maneuver to allow deadlocked committees to be bypassed altogether.

Under the new rules, either leader can put forward a motion to bring matters straight to the Senate floor in the event of a tie in committee.

If Bedoya’s nomination is sent to the Senate floor under this procedure, Vice President Kamala Harris’s tie-breaking vote would push Bedoya’s nomination over the finish line—assuming that all 50 Senate Democrats unanimously support the nominee.

The evenly split Senate has already used the procedure to confirm Biden nominees.

In March, Xavier Becerra’s nomination to head the Department of Health and Human Services was evenly split in the Senate Finance Committee in another 14–14 vote.

But even if the procedure is invoked to bring Bedoya to a floor vote, his confirmation is far from guaranteed.

Moderate Sen. Joe Manchin (D-W.Va.), a self-described “conservative Democrat,” has been willing to break with his party on issues—including Biden nominees.

Early in Biden’s tenure in office, Manchin joined with Senate Republicans to strike down Biden’s nominee for White House budget director, Neera Tanden. Without Manchin’s support, Harris can’t cast a tie-breaking vote.

Manchin, who has emphasized the importance of unifying the divided nation, may also take issue with Bedoya’s views on divisive issues and could derail the nomination.

If Bedoya is confirmed, it will be another loss for Biden, who has in the past failed to have nominees confirmed. Aside from Tanden, Biden also was forced to withdraw gun control advocate David Chipman’s nomination to the Bureau of Alcohol, Tobacco, and Firearms for views that several Democrats, including Manchin, found unpalatable.