# NEG Wiki Doc

## Off

**1NC – T**

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

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

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

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

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

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

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

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

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

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

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

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

### 1NC – Section 5

#### Next off is the *Section 5 CP*:

#### Text:

The FTC will issue enforcement guidance that the presently-existent phrase “unfair methods of competition” in Section 5 of the FTCA includes *“monopsonistic wage suppression”* and “*labor monopsony”*.

The FTC should release an interpretive guidance doc, data sets and a statement of its intent to BOTH utilize the logic of *the ABC test* in reaching germane determinations AND that *labor markets are not categorically competitive on the employer side*. The FTC should update its Merger Guidelines and clarify that *“adverse labor market effects of mergers”* and “*cartelized labor markets”* (as per the Posner ev) constitute enforceable violations of Section 5. The FTC should enforce accordingly.

The FTC should clarify that workers who are *nominally independent are unlikely to be subjected to antitrust scrutiny,* *that prosecution of employee organizations is not a priority for the agency*, and *that it intends to foreclose most actions inconsistent with concern for worker welfare*.

#### CP solves for workers and wages, but without creating a new worker welfare standard. It independently accesses their democracy warrant AND avoids the Judicial Branch.

Kim ‘20

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

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

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

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

B. Federal Agency Guidance

1. The Proposal

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

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

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

2. Normative Justification

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

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

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

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

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

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

3. Implementation

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

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

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

Kahn ‘21

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

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

I. Background

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

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

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

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

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

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

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

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

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

### 1NC – 404

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

**Rosch ‘10**

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

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

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

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

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

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

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

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

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

#### A new round of US Econ decline kills global economic stability.

* Even if other nations comprise a larger statistical share of the global economy, uncertainty in the US – not other nations – is what would trigger a global spiral.

Bloom ‘21

et al ; Nicholas Bloom Professor of Economics, School of Humanities and Sciences Senior Fellow, Stanford Institute for Economic Policy Research - “From COVID-19 to Brexit, this is how uncertainty affects the global economy” – WEF – January - #E&F - https://www.weforum.org/agenda/2021/01/global-uncertainty-index-economics-us-uk-covid-coronavirus-pandemic-brexit-china/

Economic growth in key systemic economies, like those of the United States and European Union, is a key driver of economic activity in the rest of the world. Is this also true when it comes to global uncertainty? For example, given the higher interconnectedness across countries, should we expect that uncertainty from the U.S. election, Brexit, or China-U.S. trade tensions spill over and affect uncertainty in other countries?

To answer this question, we construct an index that measures the extent of “uncertainty spillovers” from key systemic economies—the Group of 7 (G7) countries plus China—to the rest of the world. In particular, we identify uncertainty spillovers from systemic economies by text mining the Economist Intelligence Unit country reports, covering 143 countries from the first quarter of 1996 to the fourth quarter of 2020.

Uncertainty spillovers from each of the systemic economies are measured by the frequency that the word “uncertainty” is mentioned in the reports in proximity to a word related to the respective systemic-economy country. Specifically, for each country and quarter, we search the country reports for the words “uncertain,” “uncertainty,” and “uncertainties” appearing near words related to each country. The country-specific words include country’s name, name of presidents, name of the central bank, name of central bank governors, and selected country’s major events (such as Brexit).

To make the measure comparable across countries, we scale the raw counts by the total number of words in each report. An increase in the index indicates that uncertainty is rising, and vice versa.

Our results reveal two key facts:

First: Yes, uncertainty in systemic economies matters for uncertainty around the world.

Second: Only the United States and the United Kingdom have significant uncertainty spillover effects, while the other systemic economies play a little role, on average.

Starting with the United States, the chart below displays the global (excluding the United States) average of the ratio of uncertainty related to the United States to overall uncertainty. It shows that uncertainty related to the United States has been a key source of uncertainty around the world since the past few decades

For instance, during the 2001–2003 period, U.S.-related uncertainty contributed to about 8 percent of the uncertainty in other countries—about 23 percent of the increase in global uncertainty from the historical mean. n the last 4 years, U.S.-related uncertainty has contributed to about 13 percent of uncertainty in other countries—with peaks of about 30 percent—and approximately 20 percent of the increase in global uncertainty from historical mean.

#### Econ *stability* structurally dampens multiple existential risks

* Extinction via Great Power Conflicts;
* Extinction via engineered pandemics ;
* Extinction via Nuclear war

Ord ‘20

Toby Ord is a Senior Research Fellow at the University of Oxford's Future of Humanity Institute, where his work is focused on existential risk. Toby founded Giving What We Can, an international society whose members pledge to donate at least 10% of their income to effective charities, and is a key figure in the effective altruism movement, which promotes using reason and evidence to help the lives of others as much as possible. Ord holds a B.Phil., and a D.Phil. from the University of Oxford - From the book: The Precipice: Existential Risk and the Future of Humanity - From PART THREE: THE PATH FORWARD, chapter 6. “The Risk Landscape” – published March 2020 - available via google books.

While I've presented this analysis in terms of which risks should get the highest priority, these exact same principles can be applied to prioritizing between different risk factors or security factors. And they can help prioritize between different ways of protecting our potential over the long term, such as promoting norms, working within existing institutions or establishing new ones. Best of all, these principles can be used to set priorities between these areas as well as within them, since all are measured in the common unit of total existential risk reduction.

In the course of this book, we have considered a wide variety of approaches to reducing existential risk. The most obvious has been direct work on a particular risk, such as nuclear war or engineered pandemics. But there were also more indirect approaches: work on risk factors such as great-power war; or on securitv factors such as a new international institution tasked with reducing existential risk. Perhaps one could act at an even more indirect level. Arguably risk would be lower in a period of stable economic growth than in a period with the turmoil caused by deep recessions. And it may be lower if citizens were better educated and better informed.

### 1NC – Politics

#### Biden’s PC is key to pass debt ceiling through reconciliation

Hartmann 9-30-21 (Thom Hartmann, writing fellow with the Independent Media Institute, #1 progressive talk-show host, carried on SiriusXM, Pacifica, radio stations nationwide, Free Speech TV, author of "The Hidden History of Monopolies: How Big Business Destroyed the American Dream," and more than 25 other books in print, “GOP Suicide Bombers Threaten Debt-Ceiling Sabotage of US Economy,” City Watch, 9-30-2021, https://www.citywatchla.com/index.php/375-voices/22694-gop-suicide-bombers-threaten-debt-ceiling-sabotage-of-us-economy)

There's plenty of coverage about how worried Treasury Secretary Janet Yellen is about how severe the impact an American default—or even a pause in issuing Treasuries, which are essential to the smooth functioning of the international monetary system—would be.

"I think there would be a financial crisis, and a calamity," Yellen told reporters yesterday.

But left unsaid was why Republicans would want such a "crisis" and "calamity." What's possibly in it for them?

After all, raising the debt ceiling has, on its face, nothing to do with Democrats' plans to spend $3.5 trillion or so on infrastructure over the next decade; that would be dealt with in future debt ceilings.

Why would the Republicans filibuster the debt ceiling, forcing the Democrats to burn through their one-reconciliation-bill-a-year?

Perhaps that question answers itself, although it is possible under Senate filibuster rules to have a separate reconciliation bill just to raise the debt ceiling; the problem is that doing so makes the entire reconciliation process for other things even more complicated.

So what do they want? Why the suicide vests?

When McConnell last tried this, then against President Obama eight years ago, the GOP had a list of demands that Must Be Met to stop them from blowing up the country along with themselves: cut taxes on the morbidly rich, turn Medicare into a welfare program, and make it easier for big refineries and coal mines to pollute our air and rivers.

This time it appears their goal is to stop President Biden's Build Back Better legislation, also known as the $3.5 trillion reconciliation bill, a failure which will damage the Democrats politically both with their base and with independent voters for 2022 and 2024.

In other words, it's all about splitting the Democratic base against itself while making President Biden look impotent so Republicans can regain control of the House and Senate and set up Donald Trump (or equivalent) to run for president in three years.

Reconciliation is a complex and time-consuming process, and if McConnell's threat works and Democrats have to come up with an entirely new reconciliation bill to raise the debt ceiling it'll burn through precious time and political capital needed to pass Biden's signature legislation.

Even if they roll the debt ceiling and funding the government into that larger bill, it'll take a startling amount of Senate floor time that gives giant special interests more time to carpet bomb TV and other media with propaganda opposing the $3.5 trillion Build Back Better legislation while they dangle ever more money and future income opportunities in front of wavering Democrats.

And, as a bonus, the American media will fail to blame this on the GOP: they'll go along with McConnell's line that it's all the Democrats fault, even though it was the Republicans who invoked the filibuster that forces reconciliation.

Just that sentence is complex enough that our media will default to a "Democrats Fail Again" headline instead of "Republican Suicide Bombers Threaten America with Such Damage That Democrats Kill Their Own Legislation To Save the Country."

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

Carstensen ‘21

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

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

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

#### Collapses global finance

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

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

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

Figure 1

[FIGURE 1 OMITTED]

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

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

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

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

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

The debt limit debacle of 2011 must not be repeated

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

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

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

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

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

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

A U.S. default would be catastrophic

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

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

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

As Treasury Secretary Yellen told Congress in June:

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

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

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

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

--JIT = just in time

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

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

[FIGURE 1 OMITTED]

Figure 1: Systemic Emergence of Global Risks

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

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

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

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

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

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

SOCIETAL

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

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

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

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

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

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

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

### 1NC – Advantage CP

#### The United States District Court for the District of Columbia should rule for the Federal Trade Commission in its suit against Facebook. The United States Supreme Court should deny cert in appeals to this case

#### CP rules for FTC in the Facebook case – that solves FTC institutional cred – the “big cases” on TECH are what determine the agency’s future

FYI. MSU = Bluw

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

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

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

The FTC’s Rulemaking Authority

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

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

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

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

The Future of the FTC

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

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

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

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

### 1NC – States

#### Text: The 50 states and relevant territories should engage in multistate antitrust action and enforcement over private sector business practices that violate an antitrust worker welfare standard.

### 1NC – OS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Response

What needs to be done and who should do it?

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

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

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

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

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

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

4. Political Feasibility

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

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

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

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

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

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

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

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

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

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

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

5. Are We Democratic Enough Ourselves?

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

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

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

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

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

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

6. Two Dominant Tech Blocks

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

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

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

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

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

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

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

7. Harms of Doing Nothing

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

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

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

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

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

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

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

### 1NC – Vagueness

**Vagueness –**

**The plan’s generic wording is manipulated in implementation – magnified by the fact they didn’t spec an agent – wrecks solvency**

**Baer 20** [Bill Baer former visiting fellow in governance studies at The Brookings Institution and assistant attorney general of the Antitrust Division and as the acting associate attorney general of the U.S. Department of Justice, 11-19-2020 <https://equitablegrowth.org/research-paper/restoring-competition-in-the-united-states/?longform=true>]

Meaningful antitrust reform should be a priority of the next administration and the 117th U.S. Congress. The challenge of drafting legislation is substantial. On the one hand, the legislation must be written for a judiciary that is both increasingly hostile to antitrust claims in general and increasingly textualist in its statutory interpretation. On the other hand, in the context of the antitrust laws, courts have often “abandoned statutory textualism” to interpret the laws “in favor of big business,”15 explains Daniel Crane, the Fredrick Paul Furth Sr. professor of law at the University of Michigan Law School. If given discretion to interpret new legislation, the current judiciary is likely to fall back on the same **skepticism** of antitrust enforcement that it has advanced over the past 40 years.

Despite those concerns, legislation remains the best option to revitalizing antitrust enforcement. In drafting legislation, Congress can learn from the past. One case in point: The legislative history of the Celler-Kefauver bill, not its text, reveals the bill’s intent, which courts increasingly ignore.16 Congress can reduce that risk by **being explicit** in the text when vacating or rejecting existing precedent and when identifying relevant factors, such as the importance of protecting both actual and potential competition. Congress should identify in statute the elements sufficient to establish an antitrust violation **as precisely as possible**.

**Voting issue---**

**Aff conditionality destroys ground. 2AC clarifications dodge DA links and counterplan competition.**

**It’s also not topical – prohibitions are specific**

**Axtell 3** --- Katie Axtell, J.D. Candidate 2004, Seattle University School of Law, “Public Funding for Theological Training Under the Free Exercise Clause: Pragmatic Implications and Theoretical Questions Posed to the Supreme Court in Locke v. Davey”, Seattle University Law Review , 2003, https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1783&context=sulr

Government actions that constitute a prohibition under the First Amendment can be illustrated by analyzing state-instituted **barriers**, as interpreted by the Supreme Court in two seminal free exercise cases, Smith and Sherbert."s First, the classic setting of government prohibition of a religious observer's belief or practice is where an enacted law **specifically outlaws** a **particular practice**. In Smith, for example, state law prohibited the plaintiffs from ingesting peyote, a hallucinogenic drug from the stem of the peyote cactus.8 9 Possession of peyote is a Class B felony under Oregon law.9 " However, members of the Native American Church use peyote for sacramental purposes in a Saturday all-night ritual of prayers and songs.9 The act of eating, smoking, or drinking peyote "brings peace and healing, resists alcoholism, and gives visions of the Peyote Spirit who is regarded either as Jesus or an Indian equivalent."92 By outlawing the use of peyote, Oregon placed an affirmative barrier between the members of the Native American Church and their sacramental ingestion of peyote, which is a central tenet of their religious practice.

## Case

### Inequality

#### ( ) Empirically false

Their 2014 Campbell ev foreshadows a populist, isolationist POTUS – which already happened. Soft power was indeed hurt – but Aff terminals didn’t happen.

#### ( ) Trumpism inevitable

* 1AC Kupchan and Trubowitz ev presumes that worker support can invert the effects of Trumpism and nativism.
* That’s not possible – it’s taken on a life of it’s own.

Sherman ‘21

Gabriel Sherman is a special correspondent for Vanity Fair. Most recently, Sherman served as national-affairs editor at New York magazine, and he is a regular contributor to NBC News and MSNBC. “2016 ON STEROIDS”: THE RACE TO INHERIT TRUMP’S MAGA BASE IS ALREADY ON—AND THE KNIVES ARE OUT” – Vanity Fair: Hive – October, 2021 - #E&F - https://www.vanityfair.com/news/2021/09/the-race-to-inherit-trumps-maga-base-is-already-on

With the 2024 election in sight, Republican presidential contenders such as Ron DeSantis, Ted Cruz, and Mike Pompeo have begun racing each other to the bottom to claim the party’s base. That is, unless his MAGA-ness himself gets in the ring.

On the evening of July 19, several dozen Republican donors gathered for dinner in a private room at the St. Regis Aspen to hear Nikki Haley deliver a speech. The former South Carolina governor had been invited by the Republican Governors Association, which was holding its typically drama-free summer meeting at the exclusive Rocky Mountain resort. It would be a prime platform for Haley to court 27 red-state governors as she lays the groundwork for a future presidential run. But when Haley took the stage, attendees noticed that Florida governor Ron DeSantis was conspicuously absent. According to an attendee, DeSantis was holding his own fundraiser 20 miles up the road in Basalt, Colorado. “Ron was pissed he didn’t get asked to speak,” the attendee later recalled

Welcome to the 2024 Republican presidential primary.

At this nascent stage, it’s common for prospective candidates to compete fiercely for donor dollars and Fox News airtime. But the 2024 contest is playing out like no other in memory. That’s because the race is either entirely wide open or over before it begins. The outcome hinges on the whims, grievances, and obsessions of one Donald J. Trump.

The 45th president retains a psychic grip on the MAGA-fied Republican base more than six months after leaving office despite two impeachments, the horrors of the January 6 Capitol riot, and nearly 350,000 U.S. COVID-19 deaths. In July, Trump dominated the Conservative Political Action Committee straw poll with 70 percent of the vote. (DeSantis came in a distant second, with 21 percent.) “It’s a metaphysical impossibility that anybody, even a senator named Jesus H. Christ, could beat Trump in a Republican primary if he runs,” said Michael Caputo, a veteran of Trump’s 2016 campaign who briefly served as spokesman for the Department of Health and Human Services.

The candidates know this. Haley, who served as Trump’s U.N. ambassador, told The Associated Press in April that she wouldn’t run if Trump did. Others, such as DeSantis, Texas senator Ted Cruz, and former secretary of state Mike Pompeo, tell reporters they’re merely focused on the midterms. But just because candidates won’t openly challenge Trump doesn’t mean they’re not testing the waters in the event Trump doesn’t jump in. “If Trump doesn’t run, you’re going to have 2016 on steroids. There will be 25 to 30 people running for president,” a prominent Republican said. Could the field include Tucker Carlson? Sean Hannity? Even congresswoman conspiracist Marjorie Taylor Greene? Anything’s possible.

Given Trump’s long history of turning will-he-or-won’t-he speculation into a media spectacle, there’s little chance he’ll declare his 2024 intentions until after the midterms at the earliest. “I think that people will be very happy with my decision,” Trump told me when we spoke in mid-August. He was on the phone from his golf club in Bedminster, New Jersey. Removed from office, his mood was relaxed and upbeat. “I think MAGA is stronger than it’s ever been before,” he said. Trump particularly relished New York governor Andrew Cuomo’s resignation, announced two days before. “I thought he was a tough guy. Maybe he wasn’t,” Trump said.

Mostly, though, Trump seemed to enjoy watching his potential 2024 rivals being forced to anticipate his next move. “Knowing Trump, he’ll dangle it right up to the New Hampshire primary filing deadline,” a Trump confidant told me. Which means candidates are stuck waiting for Trump to get in or get out while they pretend not to be campaigning even as they knife one another behind the scenes. “It’s a holding pattern,” a frustrated Haley adviser said. “It’s unlike any previous race.”

After Mitt Romney lost to Barack Obama in 2012, the Republican National Committee famously commissioned an “autopsy” to diagnose the party’s problems with voters. The internal review produced a 100-page report that advised candidates to broaden the party’s appeal to Hispanics, Blacks, and women. Three years later, that blueprint was blown up when Trump descended his golden escalator and labeled Mexican immigrants “rapists.” “The Republican Party became a cult of personality,” said Sally Bradshaw, a former Jeb Bush adviser who coauthored the 2012 RNC autopsy. (Bradshaw quit the GOP in 2016. She now runs an independent bookstore in Tallahassee, Florida.)

Republicans didn’t even bother with a self-assessment following Trump’s loss to Joe Biden. “The reason there wasn’t an audit this time is the people left in the party don’t care about solving problems,” Bradshaw said. If anything, the party’s takeaway from 2020 is that the base wants it to become more Trumpian. A Reuters/Ipsos poll in May reported that 61 percent of Republicans agree with Trump’s big lie, that Biden stole the election. A Politico poll in June found that 3 in 10 Republicans subscribed to the conspiracy theory that Trump will be “reinstated” as president.

#### ( ) Lederer goes Neg

#### Assumes that current multilat fails – and a total re-boot is needed.

#### There’s no ev that’s coming – OR that the US, much less the Aff, are vital to the re-boot.

MSU = Green

Edith M. Lederer 9/11/2021. Associated Press. "UN chief: World is at `pivotal moment' and must avert crises". Washington Post. 6-24-2021. https://www.washingtonpost.com/world/un-chief-world-is-at-pivotal-moment-and-must-avert-crises/2021/09/11/ff58806c-1323-11ec-baca-86b144fc8a2d\_story.html

UNITED NATIONS — U.N. Secretary-General Antonio Guterres issued a dire warning that the world is moving in the wrong direction and faces “a pivotal moment” where continuing business as usual could lead to a breakdown of global order and a future of perpetual crisis. Changing course could signal a breakthrough to a greener and safer future, he said.

The U.N. chief said the world’s nations and people must reverse today’s dangerous trends and choose “the breakthrough scenario.”

The world is under “enormous stress” on almost every front, he said, and the COVID-19 pandemic was a wake-up call demonstrating the failure of nations to come together and take joint decisions to help all people in the face of a global life-threatening emergency.

Guterres said this “paralysis” extends far beyond COVID-19 to the failures to tackle the climate crisis and “our suicidal war on nature and the collapse of biodiversity,” the “unchecked inequality” undermining the cohesion of societies, and technology’s advances “without guard rails to protect us from its unforeseen consequences.”

In other signs of a more chaotic and insecure world, he pointed to rising poverty, hunger and gender inequality after decades of decline, the extreme risk to human life and the planet from nuclear war and a climate breakdown, and the inequality, discrimination and injustice bringing people into the streets to protest “while conspiracy theories and lies fuel deep divisions within societies.”

In a horizon-scanning report presented to the General Assembly and at a press conference Friday, Guterres said his vision for the “breakthrough scenario” to a greener and safer world is driven by “the principle of working together, recognizing that we are bound to each other and that no community or country, however powerful, can solve its challenges alone.”

The report -- “Our Common Agenda” -- is a response to last year’s declaration by world leaders on the 75th anniversary of the United Nations and the request from the assembly’s 193 member nations for the U.N. chief to make recommendations to address the challenges for global governance.

In today’s world, Guterres said, “Global decision-making is fixed on immediate gain, ignoring the long-term consequences of decisions -- or indecision.”

He said multilateral institutions have proven to be “too weak and fragmented for today’s global challenges and risks.”

What’s needed, Guterres said, is not new multilateral bureaucracies but more effective multilateral institutions including a United Nations “2.0” more relevant to the 21st century.

“And we need multilateralism with teeth,” he said.

In the report outlining his vision “to fix” the world, Guterres said immediate action is needed to protect the planet’s “most precious” assets from oceans to outer space, to ensure it is livable, and to deliver on the aspirations of people everywhere for peace and good health.

He called for an immediate global vaccination plan implemented by an emergency task force, saying “investing $50 billion in vaccinations now could add an estimated $9 trillion to the global economy in the next four years.”

The report proposes that a global Summit of the Future take place in 2023 that would not only look at all these issues but go beyond traditional security threats “to strengthen global governance of digital technology and outer space, and to manage future risks and crises,” he said.

It would also consider a New Agenda for Peace including measures to reduce strategic risks from nuclear weapons, cyber warfare and lethal autonomous weapons, which Guterres called one of humanity’s most destabilizing inventions.

### Modeling

Accidentally forgot cards on this advantage in the 1NC whoops

### FTC

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

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

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

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

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

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

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

#### FTC doesn’t solve scams

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

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

#### The impact is literally ridiculous

“it is no longer unthinkable, if it ever truly was, that someone take over the account of a world leader and attempt to start a nuclear war”

#### Market solutions prevent the impact

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

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

#### No nuclear terrorism – reject their fear-mongering evidence – no motive, lack of means to build, and barriers

Weiss 15 ---- Leonard, visiting scholar at Stanford University’s Center for International Security and Cooperation, former staff director on the Governmental Affairs Committee for the US Senate, former tenured professor of applied mathematics and engineering (Brown and Maryland), Ph.D. (Johns Hopkins University), “On Fear and Nuclear Terrorism,” Bulletin of the Atomic Scientists, 71.2, 3/3, [http://thebulletin.org/2015/march/fear-and-nuclear-terrorism8072](http://thebulletin.org/2015/march/fear-and-nuclear-terrorism8072#THUR)

Fear of nuclear weapons is rational, but its extension to terrorism has been a vehicle for fear-mongering that is unjustified by available data. The debate on nuclear terrorism tends to distract from events that raise the risk of nuclear war, the consequences of which would far exceed the results of terrorist attacks. And the historical record shows that the war risk is real. The Cuban Missile Crisis and other confrontations have demonstrated that miscalculation, misinterpretation, and misinformation could lead to a "close call" regarding nuclear war. Although there has been much commentary on the interest that Osama bin Laden, when he was alive, reportedly expressed in obtaining nuclear weapons, evidence of any terrorist group working seriously toward the theft of nuclear weapons or the acquisition of such weapons by other means is virtually nonexistent. The acquisition of nuclear weapons by terrorists requires significant time, planning, resources, and expertise, with no guarantees that an acquired device would work. It requires putting aside at least some aspects of a group’s more immediate activities and goals for an attempted operation that no terrorist group has accomplished. While absence of evidence does not mean evidence of absence, it is reasonable to conclude that the fear of nuclear terrorism has swamped realistic consideration of the threat.

# Block

## CP---Section 5

### 2NC---O/V

### 2NC---AT: Judicial Interpretation

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

Rozga ‘21

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

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

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

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

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

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

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

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

### 2NC---AT: Adv 3

#### Advantage 3:

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

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

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

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

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

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

How the FTC can tackle antitrust

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

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

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

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

How Congress can tackle antitrust

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

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

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

#### Lopez-Galdos goes Neg – 3 reasons:

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

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

MSU = green

Emory = blue

The FTC’s Enforcement Authority

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

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

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

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

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

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

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

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

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

The FTC’s Rulemaking Authority

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

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

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

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

The Future of the FTC

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

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

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

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

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

Seidenfeld ‘11

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

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

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

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

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

Seidenfeld ‘11

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

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

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

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

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

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

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

### 2NC---AT: Certainty

#### Sitaraman says administrative action can solve.

MSU = Green

Ganesh Sitaraman 18. the Co-founder and Director of Policy for the Great Democracy Initiative. He is also a professor of law at Vanderbilt University. Sitaraman served as policy director to Senator Elizabeth Warren during her Senate campaign, and then as her senior counsel in the U.S. Senate. “Taking Antitrust Away from the Courts: A Structural Approach to Reversing the Second Age of Monopoly Power”. https://ir.vanderbilt.edu/xmlui/bitstream/handle/1803/9447/Taking%20Antitrust%20Away%20from%20the%20Courts.pdf?sequence=1&isAllowed=y

After World War II, the United States engaged in a historic effort to rebuild Europe and Japan through the Marshall Plan. While the story of the Marshall Plan is well known, what is less commonly understood is that the United States exported aggressive antitrust laws to Europe during those post-war years. The Marshall Plan antitrust advisors believed that the massive consolidation in the German economy facilitated and sustained fascism, and they argued that a democratic society required a democratic economy.26 Today, in the context of increasing concentration, rising authoritarianism, and foreign governments commingling state and markets through state-owned enterprises and state capitalism, promoting economic democracy abroad should be an essential foreign policy objective. And yet, the text of the Trans-Pacific Partnership, a trade agreement designed by the Obama Administration, established the objectives of competition policy as “economic efficiency and consumer welfare,” a narrowly drawn and ideological conception of the purposes of antitrust law that has no basis in U.S. statutory law.27 Presidents and their administrations should abandon these cramped views of antitrust and instead encourage the adoption of more aggressive antitrust laws abroad.

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

Rosch ‘10

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

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

#### The effect is identical---business will behave as if it were binding and comply

Roberta Romano 19, Sterling Professor of Law at Yale Law School and Director of the Yale Law School Center for the Study of Corporate Law, JD from Yale Law School, MA from the University of Chicago, BA from the University of Rochester, Research Associate of the National Bureau for Economic Research, Fellow of the American Academy of Arts and Sciences and the European Corporate Governance Institute, Recipient of William & Mary Law School’s Marshall-Wythe Medallion, “Does Agency Structure Affect Agency Decisionmaking? Implications of the CFPB's Design for Administrative Governance”, Yale Journal on Regulation, Volume 36, Issue 1, 36 Yale J. on Reg. 273, Lexis

The choice between notice-and-comment rulemaking and guidance is also frequently presented as a tradeoff between regulatory flexibility and effectiveness, on the view that the greater flexibility of guidance compared to notice-and-comment rules is offset by guidance not being legally binding. Although the formal distinction is technically accurate, as numerous commentators have noted, the reality is otherwise, rendering the ostensible distinction quite misleading. As one leading casebook puts it well:

If you are a regulated party, and the agency issues an interpretive rule or policy statement indicating its present view of the law, you will probably make serious efforts to comply with that rule even if it is not formally binding. At a minimum, the rule alerts you to the kind of conduct that the agency regards as worthy of prosecution; at a maximum, the rule may effectively dictate how the agency will [\*283] conduct its prosecutorial adjudications. The *practical effect* of such rules on regulated parties may be hard to distinguish from the practical effect of legislative rules.

The unvarnished reality that firms will behave as though guidance pronouncements are, in fact, binding rules is particularly applicable to financial institutions, the focus of this Article's analysis, given the repeated interaction between financial firms and regulators. This interaction facilitates regulators' ability to retaliate on numerous dimensions through supervision and examination, in addition to their ability to bring enforcement actions for noncompliance with a specific policy. Moreover, the licensing feature of financial regulation (i.e., regulators can shut down a bank's lines of business, as well as a bank itself) is a powerful inducement for financial institutions to comply with, rather than challenge, guidance pronouncements.

As a consequence, by using guidance strategically instead of notice-and-comment rulemaking, particularly in the financial-entity regulatory context, an agency can obtain the benefit of a rule (regulated entities' compliance), without incurring the procedural costs that are legally supposed to accompany the imposition of obligations on private parties under requirements imposed on regulatory decisionmaking by Congress and courts in order to protect the public and regulated entities from arbitrary and capricious decisions. A critical issue, then, is an empirical one: to what extent can an agency shape its agenda to impose rule-like constraints on conduct while avoiding the procedural protections that are supposed to accompany such activity? But consideration of that inquiry is [\*284] not independent of another feature of administrative governance--namely, agency design, the degree to which an agency's structure is insulated from political accountability.

### 2NC---AT: Links to Politics---Guidance

#### A. Guidance docs fly under the Congressional radar---this means agencies can build support for the change before interest groups mobilize---AND…

Raso ‘10

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

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

B. Alignment of Political Principals

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

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

#### First, Aff severs *“Law”*

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

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

P.O.G.O. ‘15

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

Agency Rules and Regulations Are Not Laws

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

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

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

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

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

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

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

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

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

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

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

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

Kahn ‘21

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

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

I. Background

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

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

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

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

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

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

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

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

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

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

Federal Register: Rules and Regulations - ‘9

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

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

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

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

Kusserow ‘91

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

I. Background

A. The Medicare Anti-Kickback Statute

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

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

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

B. Public Law 100-93

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

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

C. Notice of Intent

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

D. Notice of Proposed Rulemaking

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

II. Summary of the Proposed Rule

A. Business Arrangements Not Exempt

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

B. Need for Continuing Guidance

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

C. Notice to Beneficiaries

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

D. Preferred Provider Organizations

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

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

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

F. Proposed Safe Harbors

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

1. Investment Interests

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

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

2. Space Rental

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

3. Equipment Rental

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

4. Personal Services and Management Contracts

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

5. Sale of Practice

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

6. Referral Services

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

7. Warranties

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

8. Discounts

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

9. Employees

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

10. Group Purchasing Organizations

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

III. Response to Comments and Summary of Revisions

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

A. General Comments

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

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

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

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

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

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

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

## CP

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

## Adv---Inequality

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

#### Education alt cause to inequality.

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

(i) Wages are determined by labor market

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

(ii) Education affects wages

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

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

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

#### Soft power doesn’t work.

Fenenko 16 -- Alexey Fenenko, Political Science PhD, World Politics Professor at Moscow State University Lomonosova. [Soft Power: Reality and Myth, 1-29-2016, https://russiancouncil.ru/en/analytics-and-comments/analytics/realnost-i-mify-myagkoy-sily/]//BPS

The use of soft power has natural limits. To put it tentatively, we can single out three such limitations that nullify the effect of soft power.

The first one is geopolitical. Small and medium-sized countries will always be wary of a large and powerful country. At best, their elites will always look for something to counterbalance the cultural and ideological influence exerted by other great powers and, at worst, will reject the powerful neighbor’s cultural policy, perceiving it as a new form of imperialism. It is hardly a coincidence that the strongest Russophobia is peculiar to the countries of Eastern Europe, while the strongest anti-American sentiments are witnessed in Latin America.

The second limitation is historical. The feud between some nations has such deep roots that putting an end to it through soft power instruments is hardly possible [2]. Soft power can do nothing in a country that forges its identity on the hatred for another country or its people. How much should the Soviet Union have invested in Germany in 1934 to make the latter pro-Soviet? It is obvious that nothing could have changed an already established mind-set.

The third limitation is cultural. Different nations and societies assess their role in history in different ways. Russian political scientist T. Alexeyeva rightly notes that Russian society has never had a sense of grandeur about itself. Russia has always considered itself to be a “catch-up country,” seeking the approval of those who “lead the way.” [3] Going into opposition towards other nations has often taken painful and aggressive shape in Germany and Japan. Russia has never had its own Georg Wilhelm Friedrich Hegel, who claimed that the Absolute Idea could self-actualize only in the German world, and that the history had reached its end. Russia has never had its own Paul Rohrbach, who believed that Germany was surrounded by “unhistorical peoples.” [4] Accordingly, the ability to adopt soft power appears to be quite peculiar to each country.

These limitations result in a circumscription of the successful application of soft power. Soft power is a tool for enlisting the sympathies of undecided people, rather than of making enemies change their mind.

### 2NC---AT: Multilat !

## Adv---Modeling

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

### 2NC---AT: Populism !

## Adv---FTC

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

#### Loses don’t hurt cred

Clippinger 21 --- Lucy S. Clippinger, associate at Baker & Miller PLLC. Her practice is focused on litigating complex cases in federal courts in the areas of antitrust, “CONCEDING THE BATTLE, BUT STILL WAGING THE WAR: FTC WILL CONTINUE TO TARGET PATENT LICENSING PRACTICES”, Baker & Miller LLC, April 22nd 2021, https://bakerandmiller.com/conceding-the-battle-but-still-waging-the-war-ftc-will-continue-to-target-patent-licensing-practices/

Rather than seeing the FTC’s abandonment of its appeal as a concession of the weakness of its claims, companies should view the move from the perspective of the FTC. Had the Supreme Court heard Qualcomm and agreed with the Ninth Circuit panel, the FTC’s ability to pursue administrative actions or federal court cases against companies using similar licensing practices may have been significantly impaired. By abandoning its appeal, the FTC protected itself from that risk; it is now free to pursue administrative actions and cases regarding similar licensing practices in the majority of the United States, including the District of Columbia, and is limited from pursuing them only in the Ninth Circuit (which covers the West Coast of the United States). However, for administrative FTC adjudications relating to similar licensing practices, companies that reside or transact business in the Ninth Circuit will have a clear incentive to file any appeals in that jurisdiction.

In light of the Ninth Circuit panel’s decision being limited in geographic reach, Slaughter’s statement and the anticipated future makeup of the FTC, companies should anticipate increased pursuit of cases similar to Qualcomm, rather than diminished interest. Accordingly, companies considering adopting licensing practices similar to those used by Qualcomm, and particularly companies that arguably have market power in the same or a related market, should carefully consider the risks of becoming an enforcement target; it seems likely that the FTC’s choice in Qualcomm was merely a concession of a lost battle, all while the FTC continues to pursue its long-term strategy of winning the war.

#### Non-compete wins coming

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

It would be a shame if the FTC went through the lengthy and resource-intensive notice and comment process only to have the Supreme Court reject its work product on procedural grounds. The FTC can easily accomplish the goal of eliminating most noncompete clauses by using a combination of procedural tools and substantive authority that it has long used and that courts have long accepted. It can issue a statement of enforcement policy in which it announces, explains, and supports with solid evidence, its policy of banning most noncompete clauses. It can then initiate one or more high visibility, well-chosen enforcement actions in which it finds that the noncompete clauses in the employment contracts of the low-paid employees of a particular firm violate the Sherman Antitrust Act. By using that approach, the FTC can implement one of President Biden’s most important goals in a relatively short period of time.

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

## DA---Debt Ceiling

### O/V

### T/C – Inequality

#### Turns inequality – AND political polarization, which is the driving force their ev ascribes to nativism, fascism and populism

Mian et al 13 (Atif Mian, Princeton University and National Bureau of Economic Research; Amir Sufi, University of Chicago Booth School of Business and National Bureau of Economic Research; Francesco Trebbi, University of British Columbia, CIFAR, and National Bureau of Economic Research; “Resolving Debt Overhang: Political Constraints in the Aftermath of Financial Crises,” May 2013, https://spia.princeton.edu/system/files/research/documents/mian\_resolving\_debt\_overhang.pdf)

This paper focuses on the aftermath of financial crises. We show how political environments appear systematically different in the aftermath of a financial crisis relative to before the crisis. We find evidence that politics after a crisis are plagued by polarized interests. Using the Reinhart and Rogoff (2009, 2011) comprehensive data set on financial crises, we show that banking, currency, inflation, or debt crises lead to greater ideological polarization in society, greater fractionalization of the legislative body, and a decrease in the size of the working majority of the ruling coalition. The size of the governing coalition shrinks after almost any type of crisis (banking, currency, or inflation crises) and, at the same time, political fragmentation increases.

These stylized facts, which we discuss in Section II, have relevant implications for the study of macroeconomic response to crises. Weaker governments mean political stalemate. Stronger opposition and more fragmented legislatures constrain the implementation of reforms of any kind. This endogenous response of political preferences and alliances in the face of financial crises may lead to political gridlock and makes it harder to achieve compromise on macroeconomic intervention and bailouts precisely at a time where they could be useful. The post financial crisis US congressional gridlock of 2010-2011 appears the norm, not the exception.

Macroeconomic intervention may be delayed or weak at a crucial juncture due to gridlock, while political stalemate may breed political uncertainty, with spikes in risk premia in sovereign debt markets triggering debt crises. These findings can help rationalize some of the systematic features of post-crisis economies, including why financial crises are typically followed by deep and prolonged contractions in both output and employment (Reinhart and Rogoff, 2009; Reinhart and Reinhart, 2010, RR henceforth) or by sustained waves of volatility, often resulting in secondary crises (e.g. debt crises following banking crashes1 ). It is not theoretically obvious why individuals polarize systematically in the aftermath of a financial crisis. Typically economists have emphasized the frequent increases in income inequality that follow financial crises.2 Ideological fragmentation may just be a direct consequence of this phenomenon. Perhaps large negative shocks change radically voters’ beliefs about what good public policy is.

However, even abstracting from policy uncertainty, one can conjecture that creditors and debtors naturally polarize in the aftermath of a financial crisis. Financial crises typically hurt debtors more. The reason behind this empirical observation is that most external finance in the world is raised through non-contingent debt. Hence the amount that debtors owe to creditors is not made contingent on the aggregate state of the economy.

Consequently, in the event of a financial crisis such as an economy-wide decline in asset prices, the brunt of the losses is borne by debtors. As an illustration, consider the Federal Reserve U.S. flow of funds data in Figure 1 reporting real estate and financial assets values over time. One can notice the disparity of how the value of real estate assets, mostly held by middle- and low-income indebted households, is still far from having recovered to pre-crisis levels, while financial assets, mostly held by the wealthy, have already bounced back.

In addition, debtors become insolvent precisely at the time creditors are more in need of seeing their outstanding credit is serviced. The same write-off that can be inconsequential to a creditor during an expansion may prove lethal in bad times. This drives further apart the positions of these two specific constituencies in society. Some may be hit harder than others in a financial crisis, and this is a consequential economic and political phenomenon. The post-crisis debtor-creditor polarization is not the only reason for the increase in economic inequality and political polarization, but possibly a reason. In Section III we discuss the political tug-of-war between creditors and debtors in the aftermath of a financial crisis and whether political resolution of the debt overhang problem is likely.3

### T/C – Soft Power

#### Turns soft power

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

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

Here are five reasons that would cause global panic.

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

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

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

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

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

### T/C – WMD Terror

#### Turns WMD Terrorism

Mann 14 (Eric Mann is a special agent with a United States federal agency, with significant domestic and international counterintelligence and counter-terrorism experience. Worked as a special assistant for a U.S. Senator and served as a presidential appointee for the U.S. Congress. He is currently responsible for an internal security and vulnerability assessment program. Bachelors @ University of South Carolina, Graduate degree in Homeland Security @ Georgetown. “AUSTERITY, ECONOMIC DECLINE, AND FINANCIAL WEAPONS OF WAR: A NEW PARADIGM FOR GLOBAL SECURITY,” May 2014, <https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/37262/MANN-THESIS-2014.pdf>)

The conclusions reached in this thesis demonstrate how economic considerations within states can figure prominently into the calculus for future conflicts. The findings also suggest that security issues with economic or financial underpinnings will transcend classical determinants of war and conflict, and change the manner by which rival states engage in hostile acts toward one another. The research shows that security concerns emanating from economic uncertainty and the inherent vulnerabilities within global financial markets will present new challenges for national security, and provide developing states new asymmetric options for balancing against stronger states.¶ The security areas, identified in the proceeding chapters, are likely to mature into global security threats in the immediate future. As the case study on South Korea suggest, the overlapping security issues associated with economic decline and reduced military spending by the United States will affect allied confidence in America’s security guarantees. The study shows that this outcome could cause regional instability or realignments of strategic partnerships in the Asia-pacific region with ramifications for U.S. national security. Rival states and non-state groups may also become emboldened to challenge America’s status in the unipolar international system.¶ The potential risks associated with stolen or loose WMD, resulting from poor security, can also pose a threat to U.S. national security. The case study on Pakistan, Syria and North Korea show how financial constraints affect weapons security making weapons vulnerable to theft, and how financial factors can influence WMD proliferation by contributing to the motivating factors behind a trusted insider’s decision to sell weapons technology. The inherent vulnerabilities within the global financial markets will provide terrorists’ organizations and other non-state groups, who object to the current international system or distribution of power, with opportunities to disrupt global finance and perhaps weaken America’s status. A more ominous threat originates from states intent on increasing diversification of foreign currency holdings, establishing alternatives to the dollar for international trade, or engaging financial warfare against the United States.

### T/C – India-China

### 2AC 1

#### Our arg was never that the debt ceiling would never get raised – only that delay getting it through reconciliation risks miscalc and accidental default AND market overreactions to brinksmanship

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### It’s NOT certain – there’s only barely enough time before markets freak out in anticipation and our impact’s triggered – ANY disruption to the timeline is fatal

Myers et al 10-1-21 (Charles Myers, Chairman of Signum Global Advisors, over 20 years of US political and electoral experience advising candidates in Presidential, Senate, House of Representatives, Gubernatorial and Mayoral races, including Hillary Clinton and President Joe Biden, 25 years of experience in global financial markets, former Global Head of Equities and Board Member at Fox-Pitt, Kelton, M. Phil Cambridge University, BA Amherst College; interviewed by Matt Peterson, ideas editor for Barron's Group, has covered the economy, politics, and global affairs for more than 15 years, formerly worked for The Atlantic, Eurasia Group, and Yale University; “‘Go for Growth at Any Cost’: What’s Driving Democratic Strategy into the Midterms,” Barron’s, 10-1-2021, https://www.barrons.com/articles/whats-driving-democratic-strategy-into-the-midterms-biden-debt-ceiling-51633119902)

Barron’s: Let’s level-set. How dysfunctional is the policy process right now on a scale of one to 10? One is, say, we’re going to breach the debt ceiling, and 10 is things are working well.

Charles Myers: It varies by issue. On BIF [the bipartisan infrastructure framework] and on reconciliation, I would say the dysfunction is far less than it appears from the outside, meaning internally within the Democratic Party. We could even have a vote on BIF tonight. It may slip until tomorrow. They’re very close. On that issue, I would give it an eight, despite the noise.

On the debt ceiling, I would give it a two because the Democratic leadership is insisting that Republicans vote with them to lift or suspend the ceiling. That’s just not going to happen. Their procedural alternative to raise the ceiling is to pass a new budget resolution, just the Democrats, and then hold a standalone vote on the debt ceiling and lift it to a new number. From everything we’ve seen, that process could take seven to 10 days. If they really accelerated, there’s a possibility they could do it in three to four days, but that’s assuming everything works perfectly. Nothing in Washington ever works perfectly.

The risk on the debt ceiling is that we get much closer to the edge than is comfortable for the markets. If there’s no clarity on resolution of the debt ceiling, I would argue, before the 8th, 9th, 10th of October, the markets will start to really sell off. Then the risk of missteps and actually breaching the ceiling is quite high.

On that issue at the level of dysfunction is quite high because of the politics involved and how angry the Democrats are that they did vote in a bipartisan way three times under President Trump to raise or suspend the ceiling.

Barron’s: What would tip the Democrats over into starting the reconciliation process to raise the debt ceiling? Because as you said, right now, they’re angry that Republicans don’t want to help.

Charles Myers: It’s going to be a function of two things. One, if BIF actually passes in the House, it gets that done and is a big win for Biden and for the Democrats. The second thing is the calendar, meaning reality. As we head into the next four to five days, the leadership is really bumping up against a calendar deadline, that in fact could — and they’re very much aware of this — put them in very dangerous waters.

Barron’s: It sounds like even in the best-case scenario, we’re looking at much of October being filled with alarming headlines from Washington.

Charles Myers: On the debt ceiling, yes. For the market, it’s the single biggest issue right now in the very short term. Our base case is the Democrats will raise it just in time, but we’re going to get a little closer to the edge than is comfortable for the market.

#### Every day of delay matters

Levitz 9-30-21 (Eric Levitz, Associate Editor of Daily Intelligencer and Senior Writer at New York Magazine, MA Fiction Writing, Johns Hopkins University, “How Biden Could End the Debt-Ceiling Crisis by ‘Minting the Coin’,” Intelligencer, New York Magazine, 9-30-2021, https://nymag.com/intelligencer/2021/09/debt-ceiling-mint-the-coin-explained.html)

How congressional Democrats could raise the debt ceiling on their own

Democrats can’t pass an ordinary bill raising the debt ceiling without either (1) Senate Republicans’ cooperation or (2) abolishing the legislative filibuster. The GOP refuses to provide the former, and Joe Manchin loves the latter more than life.

But that still leaves Democrats with one viable option. A special type of legislation known as a “budget reconciliation bill” cannot be filibustered in the Senate. And budget reconciliation can be invoked to raise the debt limit once every fiscal year. Democrats could therefore use that process to pass a debt-ceiling hike on their own. This is, in fact, what McConnell has told the party to do.

The downside of this option is that budget reconciliation is an elaborate process chock-full of so many arbitrary rules that it would take weeks just to pass a clean debt-ceiling-hike bill through a reconciliation bill. Doing so would also likely require Senate Democrats to cancel their October recess. On Wednesday, the Senate’s second-highest-ranking Democrat, Dick Durbin, told Politico, “Using reconciliation is a nonstarter. We have gone through it twice, I’ve listened, and it takes him about 15 minutes for Chuck Schumer to explain how that works, what it involves. Three or four weeks of activity in the House and Senate.”

This isn’t a great excuse for not raising the debt limit through reconciliation. Yes, the process is arduous. But it would allow Democrats to effectively abolish the debt ceiling, once and for all, by raising the debt limit to ​​ “googolplex dollars,” or else simply decreeing that from this point forward, the debt ceiling will be set at a level equivalent to the total debt that the U.S. government holds.

This said, because reconciliation is arduous, it becomes a less viable option with each passing day. With congressional Democrats still dragging their feet, it’s possible that the fate of the U.S. economy rests on Joe Biden’s willingness to “mint the coin.”

#### Avoiding delay’s key

Weisman 10-1-21 (Jonathan Weisman, congressional correspondent at the New York Times, 30 year career in journalism; “Four Jagged Puzzle Pieces and a Few Weeks for Democrats to Assemble Them,” New York Times, 9-28-2021, updated 10-1-2021, https://www.nytimes.com/2021/09/28/us/politics/biden-agenda-debt-limit-infrastructure.html)

In a pivotal week, in a make-or-break stretch for President Biden’s domestic agenda, congressional Democrats are trying to assemble a puzzle of four jagged pieces that may or may not fit together.

Making them work as a whole is critical for the party’s agenda and political prospects, and how quickly they can assemble the puzzle will determine whether the government suffers another costly and embarrassing shutdown — or, worse yet, a first-ever default on its debt that could precipitate a global economic crisis.

Here are all the moving parts.

Piece 1: Government funding.

At a second past midnight on Friday morning, the parts of the government that operate under the discretion of Congress’s annual spending process will run out of money if a stopgap spending bill does not pass. Oct. 1 is the beginning of the fiscal year, and with larger issues dominating their attention, the Democratic House and Senate have not completed any of the annual appropriations bills to fund the Departments of Defense, Transportation, Health and Human Services, State and Homeland Security, to name a few.

This is not unusual. More often than not, the individual funding bills do not pass until winter. In the interim, Congress passes “continuing resolutions” to keep departments open at current spending levels, with perhaps a few tweaks for urgent priorities and emergencies like hurricane response and, this year, Afghan refugee resettlement.

By Thursday, Congress could easily pass such a resolution to avoid a lapse in funding that could furlough federal workers and force “essential” employees, like those at the Transportation Security Administration, to work for no money. But on Monday, such a stopgap measure was blocked by Republicans in the Senate because it was attached to …

Piece 2: The debt limit.

The federal government has for decades operated under a statutory ceiling on the amount it can borrow — in common parlance, the debt limit. The $28 trillion federal debt climbs inexorably, not only because the government spends so much more than it recoups in taxes, but also because parts of the government owe money to other parts, mainly most of the government owing money from Social Security after decades of borrowing.

In essence, raising the debt limit is akin to paying off your credit card bill at the end of the month, because a higher borrowing ceiling allows the Treasury to pay creditors, contractors and agencies money that was already extracted from them in Treasury bonds and notes or contracts. It is not for future obligations.

The last time the issue surfaced, in August 2019, Congress and President Donald J. Trump suspended the debt limit through July 31 of this year. On Aug. 2, the Treasury reset the debt limit to $28.4 trillion, and the government crashed through it days later. Ever since, the department has been shuffling money from account to account to make sure its bills are paid, but sometime in mid- to late October, such “extraordinary measures” will be exhausted, and the bills will go unpaid. This would be a shock to the international economy, since U.S. government debt is a global safe harbor for all kinds of cash and investments.

During Mr. Trump’s presidency, Republicans and Democrats did not fight over debt limit increases, in part because large spending increases for the coronavirus pandemic and other priorities were bipartisan — although the large tax cut of 2017 was not.

This year, Republican leaders have declared that because Democrats control the House, the Senate and the White House, they and they alone must raise the debt ceiling.

Republicans have made it clear that they intend to filibuster an ordinary bill to raise the debt ceiling, as they did on Monday. For Democrats to do so unilaterally, they would most likely have to use a budget process called reconciliation that shields fiscal measures from a filibuster.

Doing so is a complex and time-consuming affair. It all has to be done in the next two to three weeks, to beat the still unknown but rapidly approaching “X date” when the government defaults. Janet Yellen, the Treasury secretary, told Congress on Tuesday that the deadline is Oct. 18.

#### Risk’s increasing by the day

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

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

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

“The U.S. retains some exceptional credit strengths, and its ratings are underpinned by its high degree of economic, institutional and financial resilience,” notes Thomas R. Torgerson, Co-Head of Sovereign Ratings at DBRS Morningstar. “However, DBRS Morningstar considers brinksmanship

with the debt ceiling to be a dangerous game - atypical of a 'AAA' rated sovereign.”

### AT: Thumpers

#### NO thumpers – infrastructure and everything else is dead – at least for now – focusing PC on debt ceiling

ZB 9-30-21 (ZubuBrothers, market knowledge service that publishes staff-written pieces as well as aggregating news, commentary & opinions from external sources, “Senate Strikes Deal To Avert Shutdown, But Remains Deadlocked On Debt-Ceiling, Domestic Agenda,” 9-30-2021, https://zububrothers.com/2021/09/30/senate-strikes-deal-to-avert-shutdown-but-remains-deadlocked-on-debt-ceiling-domestic-agenda/?amp=1)

Now that Sen. Joe Manchin has denounced his own party’s multi-trillion plan to expand the social safety net as “the definition of fiscal insanity,” we can be virtually assured that the entire Democratic domestic agenda has essentially been left dead in the water, since the progressive Left won’t agree to back the Dems’ “bipartisan” infrastructure plan via reconciliation without first passing the larger spending package through both chambers.

Whatever the outcome, Manchin’s statement suggests it will likely take weeks and months – not days – for President Biden and the leadership to negotiate the votes – if indeed they can ever resolve the intractable divide within their own party, which has largely taken the form of aggressive leftists in the House (exemplified by the AOC-led “squad”) vs. a pair of moderates (Manchin and Arizona’s Kyrsten Sinema) in the Senate.

That’s fortunate, in a sense, since it means Chuck Schumer and Nancy Pelosi will have no choice but to focus on the arguably more pressing priorities: keeping the government funded while raising the debt ceiling, ideally before Treasury Secretary Janet Yellen’s “drop-dead” date of Oct. 18.

(And, of course, placing some hedging trades during last night’s Congressional baseball game).

**[TWEET OMITTED]**

With the Democrats heading for an iceberg of a vote on the infrastructure package Thursday that the left has already promised to sink, Schumer announced late Wednesday night that, at the very least, the leadership had secured a deal to extend funding for the federal government until Dec. 3, crossing off arguably the easiest thing on their “to do” list.

The deadline for the shutdown is midnight tonight (because the new fiscal year starts tomorrow).

“We have an agreement on the the continuing resolution to prevent a government shutdown, and we should be voting on that tomorrow [Thursday] morning,” Schumer said.

The House passed a government funding bill last week on a party-line vote of 220-211.

Now that the spending package has been stripped of Republican-opposed language suspending the debt-ceiling (which analysts fear will only be resolved much, much closer to Yellen’s deadline, which is really the start of a countdown before the money actually runs out) the leadership believes it has the votes to pass a “clean” continuing resolution to fund the government in a series of Thursday-morning votes.

Asked about the progressives’ plans to sink the infrastructure package, Manchin told reporters “I didn’t know I was on their timetable”, referring to the progressive leftists, whose rebellion has threatened to irreparably damage the Biden presidency.

Progressives, led by Washington’s Pramila Jayapal, say they have enough votes in the House to sink the infrastructure package, which has already passed the Senate, but Pelosi appears undeterred. “The plan is to bring the bill to the floor,” she told reporters after returning from a White House meeting with Biden and Schumer yesterday afternoon.

As for the larger spending bill, a few compromise numbers have been thrown around. One reporter said during yesterday’s WH press conference that the heard $2.5 trillion might be a workable number. Manchin has meanwhile hinted he could back $1.5 trillion while Sinema has been more circumspect. The debt ceiling has already passed the House, but remains stuck in the Senate, where Minority Leader Mitch McConnell has managed to get his entire caucus to vote against it, while Dems have said they are unwilling to use the same “reconciliation” short-cut to get the debt-ceiling deal done (which would use up valuable political capital).

As Thursday begins, get ready for another day of non-stop headlines on every marginal development on the Dems’ negotiations, as talks grind on.

### AT: N/I/L – PC Not Key

#### Biden’s gotta keep Dems in line to move fast

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Regardless of whether you call it PC or simply getting shit done quickly, provoking a brand new partisan battle when the agenda for the next couple weeks is already maxed blows any chance of the debt ceiling – there’s no extra time nor energy

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

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

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

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

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

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

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

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

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

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

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

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

#### The rest of his agenda collapsing has ironically opened a narrow window of opportunity – BUT keeping his PC focused is key to get it done in time

ZB 9-30-21 (ZubuBrothers, market knowledge service that publishes staff-written pieces as well as aggregating news, commentary & opinions from external sources, “Senate Strikes Deal To Avert Shutdown, But Remains Deadlocked On Debt-Ceiling, Domestic Agenda,” 9-30-2021, https://zububrothers.com/2021/09/30/senate-strikes-deal-to-avert-shutdown-but-remains-deadlocked-on-debt-ceiling-domestic-agenda/?amp=1)

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

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

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

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

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

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

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

Folio ‘21

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

Meanwhile, on Capitol Hill …

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

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

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

So, what does it all mean?

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

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

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

#### It’s not a high enough Dem priority AND PC key to make reform coalitions.

**Sagers, 21** (Christopher, “AMERICAN ANTITRUST AND THE NEAR TERM: CONSISTENCY, ONE IMAGINES, AND SOME REASONS WHY,” accessed 5-21-21, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>) JFN

15. And so I reach the same conclusion being reached by many other Americans who care about antitrust and think it has been wrecked, and hoping for action that even five years ago I would have said was crazy. The only hope left is legislative reform of statutory antitrust. I think Congress should amend the law to reaffirm its own intention that the law be enforced proactively, aggressively, prophylactically, and for real, without giving every defendant the benefit of every conceivable doubt. Congress should do that in a way that keeps the courts from thwarting its intent through nullifying interpretations, as they have done many times before. Obviously, Senate control is again quite relevant. Under those Senate norms that still remain—in which we retain a filibuster rule for ordinary legislation—a party with fewer than 60 seats can typically do little. The two parties do not apparently work together in hardly any fashion. The party that holds the majority, even if only by one vote, controls the institution and its actions outright, but the minority can typically keep it from taking meaningful substantive action. Where the opposing party holds the White House, Senate minorities have filibustered essentially all legislation, apparently just to deny the opposing President any opportunity for campaign-trail self-congratulation. When the majority party can take effective action, it will only be in extraordinary circumstances or by using a filibuster exception, like the budget reconciliation procedure that was used in connection with the Obamacare legislation in 2010, and in subsequent Republican efforts to repeal it. [304] But antitrust, however important and however much it has returned to popular consciousness, seems unlikely to be so high on the Democratic agenda that it is chosen as one of the extraordinary matters Democrats prioritize in this way, even if they win Senate control. 16. And on top of all of that, it does not help that in this world, in which we dwell on ideas and not institutions—perhaps because institutions seem boring, and do not invite intellectual abstraction or Manichean dreams of good and evil—we see sharp divisions even within our factions. Only liberals and progressives in America favor more antitrust enforcement, but among us we have several hotly disputed disagreements, and some difficulties getting along. It reflects in microcosm the struggle of left and center of the election of 2016. So in 2021 and thereafter, it seems like it will be a fair bit of work to build any effective reform coalition. [305]

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

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

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

The Challenge: Multiple Existential Threats

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

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

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

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

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

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

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

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