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T-Economy Wide:

#### ‘Core antitrust laws’ are economy-wide.

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

Vote NEG for limits and ground – sectors are unbounded, permitting any procedural change to all industries

## FTC DA

#### FTC DA:

#### The FTC has shifted from tech mergers to gas consolidation---that solves energy concentration and hikes.

Botts ‘9/1/17 [Baker Botts is an international law firm of approximately 700 lawyers practicing throughout a network of 13 offices around the globe. Based on our experience and knowledge of our clients' industries, we are recognized as a leading firm in the technology, energy, and life sciences sectors. "FTC Chair Turns Antitrust Attention to Energy Industry." https://www.bakerbotts.com/thought-leadership/publications/2021/september/ftc-chair-turns-antitrust-attention-to-energy-industry]

For the energy sector, one silver lining of the increasingly aggressive rhetoric from antitrust regulators has been their singular focus on “big tech.” It seemed, for a time, that oil & gas had finally abdicated its long-held position as the industry most likely to be on the receiving end of heightened antitrust scrutiny. Any such hope evaporated last week, when Lina Khan, the new chair of the Federal Trade Commission, sent a letter to the White House, making clear that she has the energy industry squarely within her sights.

This renewed focus on the energy industry comes at an already sensitive time. If gas prices rise in the wake of Ida, there will be loud calls for an investigation, as was the case after Hurricanes Katrina and Rita in 2005. Similar to those storms, Ida amounted to a direct hit on the industry, barreling through the Gulf Coast and Louisiana, leaving more than 1 million without power. While it remains to be seen what will ultimately happen with fuel prices, there were already calls for an investigation after prices rose through the summer, even before the hurricane was on the horizon.

I. Ms. Khan’s Letter

The letter, sent on August 25, came in response to a request from Brian Deese, Director of the National Economic Council, for the FTC to investigate elevated gas prices. In his August 11 letter, Deese noted, “During this summer driving season, there have been divergences between oil prices and the cost of gasoline at the pump.” He asked the FTC to investigate. Khan’s response went far beyond Deese’s straightforward request, outlining a three-part enforcement plan, tightly focused on the energy industry.

First, Khan stated, she plans to “identify additional legal theories” to challenge retail fuel station mergers “where dominant players are buying up family-run businesses.” This remarkably specific initiative, possibly untethered to traditional concerns about customer impacts, could mean longer and less predictable reviews for deals involving the sale of independent gas stations.

Second, Khan indicated she would be “taking steps to deter unlawful mergers in the oil and gas industry.” While she again made clear that she is focused on retail fuel deals, she clearly left the door open for a broader industry focus. Specifically, Khan referred to a July decision to rescind a prior FTC policy that limited requirements for parties to any merger ultimately deemed unlawful to obtain prior approval from the agency for any future transactions. In her letter from last week, Khan stated: “we will impose ‘prior approval’ requirements to deter those who propose illegal mergers, including in retail gas markets.”

Finally, Khan wrote that she “will be asking our staff to investigate abuses in the franchise market.” She hypothesized that “large national chains” might be forcing their “franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee’s convenience store operations.” Khan then signed off, stating, “I will continue to assess how the FTC can use its tools to police unlawful business practices in oil and gas markets.”

All of this adds up to a notably focused promise to create new hurdles for proposed transactions in the energy industry and to find new reasons to investigate a variety of conduct.

II. Pricing Investigations

Whether triggered by Hurricane Ida or by letters from concerned officials such as Mr. Deese, any FTC gas pricing investigation would bring significant discovery burdens for industry participants. The post-Katrina report, released in May 2006, explained: “Since August 2005, the Commission has expended substantial resources on this investigation, including the full-time commitment of a significant number of attorneys, economists, financial analysts, paralegals, research analysts, and other support personnel with specialized expertise in the petroleum industry.” Specifically, FTC staff conducted 65 interviews, issued 139 Civil Investigative Demands (similar to subpoenas), and 99 orders seeking profitability and tax expenditure information. Staff identified more than 105 retailers accused of price gouging.

Despite the deep dive, the Commission uncovered very little evidence of wrongdoing. While finding that seven refiners, two wholesalers, and 24 single-location retailers had higher average gasoline prices that were not substantially attributable to higher costs during the relevant period, the report ultimately concluded: “additional analysis…showed that other factors, such as regional or local market trends, appeared to explain the pricing of these firms in nearly all cases.”

This prior failure to find illegal conduct is unlikely to dissuade the current slate of enforcers from pursuing a similar investigation. Aggressive antitrust enforcement has rapidly become a central cause of the current administration. Biden’s antitrust appointees, including Khan, are clearly intent on implementing an elevated level of antitrust scrutiny.

#### The plan causes case cutting---it overburdens the agency.

Hoofnagle, et al, 19—Adjunct Professor of Information and Law, University of California, Berkeley (Chris, with Woodrow Hartzog, Professor of Law and Computer Science, Northeastern University, and Daniel J. Solove, John Marshall Harlan Research Professor of Law, George Washington University Law School, “The FTC can rise to the privacy challenge, but not without help from Congress,” <https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/>, dml)

Resources are the FTC’s greatest constraint. It is a small agency charged with a broad mission in competition and consumer protection. It carries out this mission with a budget of just over $300 million and a total staff of about 1,100, of whom no more than 50 are tasked with privacy. In comparison, the U.K.’s Information Commissioner’s Office (ICO) has over 700 employees and a £38 million budget for a mission focused entirely on privacy and data protection. In addition, for much of modern history, Congress has kept the FTC on a short leash. In 1980, Congress punished the agency for being too aggressive, causing it to shut down twice. Congress has held authorization over the agency’s head and used oversight power to scrutinize what members of Congress perceive as the expansive use of FTC legal authority, including its interpretation of privacy harm.

Given these constraints, FTC attorneys make pragmatic choices in their case selection. At any given time, line attorneys are investigating many companies and weighing decisions on where to target limited enforcement resources. The FTC can only bring actions against a small fraction of infringers, and it has chosen cases wisely to make loud statements to industry about how to protect privacy.

#### Extinction.

Koranyi ’16 [David; 2016; Chief Advisor of City Diplomacy for the Mayor of Budapest, former Director of the Atlantic Council's Eurasian Energy Futures Initiative; Atlantic Council Strategy Paper, “A US Strategy for Sustainable Energy Security,” <https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/AC_SP_Energy.pdf>]

The United States should work toward a global energy system that is characterized by the reduction of excessive price volatility on global energy markets and the minimization of the impact of geopolitical upheavals. This requires the introduction of more competition, transparency, liquidity, better rules and regulations for energy trade, and the stabilization of global energy trading routes in concert with other key stakeholders. The liberalized global energy trade would be coupled with transparent and efficiently functioning global and regional markets. This necessitates energy market integration and interconnections in Europe, Asia, Africa, and Latin America alike to enhance regional synergies and create markets. This integration process should be supported by US experience and technical assistance.

It is of utmost importance to ensure that competition is not distorted, with special regard to cartelization in the regional and global gas markets. The United States should promote global principles for competition in the energy markets to reduce the risk of cartelization and price setting, cripple the disruptive ability of irresponsible players on the market, enhance security of supplies, and promote open and efficiently functioning markets.

Monitoring the implementation of global and regional climate agreements; promoting dialogue and cooperation between consumer and producer countries; introducing and enhancing dispute resolution mechanisms; increasing transparency and reducing volatility on the international energy markets; and devising international standards of physical and cyber energy infrastructure protection will be at the center of the US international energy governance agenda. Therefore, international institutions that serve US national interests need to be strengthened further with special regard to the International Energy Agency (IEA), the United Nations Sustainable Energy for All Initiative (SE4All,) the International Renewable Energy Agency (IRENA), and the Energy Charter Treaty. In particular, the IEA’s mandate, organization, and budget should be reinforced to allow the organization to conduct a global energy dialogue with all key stakeholders, and to play a robust role in facilitating the exchange of best practices in green technology deployment, energy efficiency, and other key issues in the context of the Paris Climate Agreement.

As the energy sector undergoes a fundamental transformation, new global actors emerge and play a decisive role in how to produce and consume energy and control the climate. The new ‘lateral energy regime’ vastly widens the circle of interested and invested actors and influencers.58 This new paradigm requires a fundamentally different approach to governance on all levels: local, national, and international. The United States should invest in the empowerment and inclusion of constructive new actors to co-govern the energy space, while depowering spoiler actors, such as terrorist organizations that target energy infrastructure. Designing a new model for public-private-people-partnerships (PPPP) is essential to managing the complex interplay between the traditional and new producers, transporters, and consumers of energy—municipal and regional governments and civil society actors.

Conclusion

The first of the Atlantic Council Strategy Paper Series, Dynamic Stability: US Strategy for a World in Transition, identified the protection of global commons by the United States as critically important for both material and moral reasons. It rightly argued that “it is important to include climate in the definition of global commons.”59 That paper defined ‘dynamic stability’ as the key conceptual framework to deal with a fast-changing ‘Westphalian-Plus’ world and argued for “harnessing change to preserve the liberal international order.”60

Harnessing change in the energy sector expeditiously is an existential issue for all humanity. Dynamic stability in the US energy sector would mean leveraging the unique natural bounty and technological prowess of the United States and using the very momentum created by the unconventional hydrocarbon revolution to gradually pivot away from fossil fuels. Leaving the current system unreformed and unmodernized will threaten the security and well-being of American citizens, hurt the US economy at home, and isolate the United States internationally. By compromising on market-friendly public policy measures and leveraging the low oil price environment, the United States can introduce the right incentives into the energy system to shepherd an accelerated energy transition into a more modern, low-carbon energy era that still relies heavily on natural gas—particularly during the transition—and nuclear power to provide baseload generation and counter seasonal intermittency.

## Politics

#### Politics DA:

#### Biden’s PC is all in on infrastructure – it will get done, but it’s on a razor’s edge now.

Shear '10/29 - veteran White House correspondent and two-time Pulitzer Prize winner   
[Michael D and Jim Tankersley, "Biden Implores Democrats to Support His Transformative Agenda," https://www.nytimes.com/2021/10/28/us/politics/infrastructure-bill-spending-plan.html]

WASHINGTON — President Biden was blunt. Democrats had to rally behind his $1.85 trillion economic and environmental spending bill, he told them on Thursday, because nothing less than his presidency was at stake.

“I don’t think it’s hyperbole,” he said as he unveiled a revised proposal and pleaded with Democratic lawmakers to support it during a last-minute morning meeting at the Capitol, hours before he left for a six-day trip to Europe to meet with world leaders.

“The House and Senate majorities and my presidency will be determined by what happens in the next week,” Mr. Biden told the lawmakers during the hourlong session, according to a person who was at the meeting.

The president’s proposals, while about half as costly as his original plan, still amount to a transformative agenda that would touch the lives of millions of Americans and serve as the core of his party’s argument to stay in power through the 2022 midterm elections and the 2024 presidential contest.

And even as party members have engaged in a fierce, ideological debate among themselves, the monthslong negotiation has thrown into stark relief the differences between Democrats and Republicans, almost all of whom have refused to back spending on child care, climate change, preschool, expanded Medicare services, free community college or higher taxes on corporations and the wealthy.

Mr. Biden and his aides gambled on Thursday, effectively calling for a final decision on his economic and environmental agenda and daring holdout Democrats not to back it. Senior administration officials said that the decision to go all-in was a product of the president’s belief that he had exhausted all avenues in the talks and secured the best possible package he could — and, crucially, that the package could command support from all corners of a fickle Democratic caucus.

But as he prepared to land in Rome, Mr. Biden’s bet had not yet paid off. He had not ended months of intraparty squabbling that has dragged down his poll ratings, jeopardized Democratic candidates and raised deep doubts among Americans that his presidency can deliver on the promises of a vast social and economic agenda.

In the closed-door session on Thursday, Speaker Nancy Pelosi told Democratic lawmakers that “when the president gets off that plane, we want him to have a vote of confidence from this Congress.” She urged them to vote on Thursday on a separate, bipartisan $1 trillion infrastructure measure that progressives have seen as their best leverage to ensure passage of the rest of Mr. Biden’s agenda.

Instead, for the second time in a month, Ms. Pelosi pulled back from plans on that vote after progressive Democrats objected again. They ignored the president’s entreaties, signaling their continued mistrust of moderate Democratic senators, whom they fear will not back Mr. Biden’s larger social spending bill when it finally comes to a vote.

Senior White House officials shrugged off the setback, saying the president’s formal request on Thursday set in motion the final act of a monthslong political drama. They expressed confidence that votes on both bills would happen soon. The bickering among Democrats would fade, one senior official said, when Americans started seeing the benefits of Mr. Biden’s plans, like when the administration breaks ground next year on new electric vehicle charging stations. The official asked for anonymity to speak about closed-door negotiations.

Administration officials also said they were not surprised by the public comments from Senators Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona, moderate Democrats who had forced the original $3.5 trillion proposal to be halved. The two delivered halfhearted statements that pointedly did not promise that they would support the president’s new framework for a deal on the spending bill.

But White House officials concluded that it was time for Mr. Biden to put down his final marker, explicitly asking Democratic lawmakers for their support on a specific proposal. Having the president leave for a week on his trip without doing so would have left the process in limbo, administration officials said.

And yet, the legislative disarray of the moment had the potential to leave Mr. Biden no better off than he had been 24 hours earlier. He was set to arrive in Rome without tangible evidence that he could break the political logjam that has stalled progress on his promises. He had only the outlines of an agreement, with no firm proof that it would pass. It will fall to him in several days of meetings this weekend to persuade world leaders that he will prevail with his plans for corporate taxation, climate change and more.

The president’s agenda might eventually make its way to his desk. Lawmakers said they planned to continue working throughout the weekend toward votes on both bills. But in the meantime, Mr. Biden is left without a concrete plan that has the support of Congress to present at the G20 gathering or the climate change summit next week.

Still, he appeared to reach a critical juncture on Thursday on the strategy for his agenda, which he has pursued for months. The president initially proposed trillions in spending to overhaul the government’s role in the economy, but he has consistently said he is willing to compromise.

That challenge has required a delicate balance in his own party, which controls Congress by razor-thin margins. Mr. Biden first had to negotiate with Republicans on an infrastructure bill, largely to unlock support from Senate centrists on a larger spending bill that was meant to carry the portions of his agenda that could not win bipartisan support. He then had to balance the concerns of centrists, who worried about spending and taxing too much in the larger bill, with the complaints of progressives who wanted him to spend trillions more than he was ultimately able to get.

Bringing the Democratic Party together took months. Mr. Biden pushed centrists to come up from their original demands that the bill cost $1.5 trillion or less. He also pushed progressives to compromise for far less than they had hoped, and to jettison programs that Mr. Manchin and Ms. Sinema opposed.

Officials suggested that shortly before leaving for Europe, Mr. Biden had reached a natural conclusion of those discussions: He had pushed the centrists to come up as far as they could, they said, and was making the case to progressives that there would not be a better possible deal.

#### Obama administration proves that new antitrust rules for ag causes policy hostage-taking by the House.

Khan ’12 [Lina; November/December; JD at Yale Law School, antitrust expert, now in the Biden FTC; the Washington Monthly, “Obama’s Game of Chicken,” https://washingtonmonthly.com/magazine/novdec-2012/obamas-game-of-chicken/

The change that finally upended this balance came in 1981. A group of Chicago School economists and lawyers working in the Reagan administration introduced a new interpretation of antitrust laws. Traditionally, the goal of antitrust legislation had been to promote competition by weighing various political, social, and economic factors. But under Reagan, the Department of Justice narrowed the scope of those laws to promote primarily “consumer welfare,” based on “efficiency considerations.” In other words, the point of antitrust law would no longer be to promote competition by maintaining open markets; it was, at least in theory, to increase our access to cheap goods. Though disguised as an arcane legal revision, this shift was radical. It ushered in a wave of mergers that, throughout the course of the following decades, would transform agriculture markets.

Although the change was strongly opposed by centrists in both parties, a number of left-wing academics and consumer activists in the Democratic Party embraced the new goal of promoting efficiency. The courts also soon began to reflect this political shift. In 1983, after Cargill, the nation’s second-largest meatpacker, moved to purchase Spencer Beef, the third largest, a rival meatpacker named Montfort filed a lawsuit claiming that the acquisition would harm competition in the industry. In a 6-2 decision three years later, the Supreme Court ruled in favor of Cargill. The decision set a precedent limiting competitors’ ability to challenge mergers, and helped catalyze a rapid series of buy-ups across the agriculture industry. In 1980, the four biggest meatpacking companies in the country controlled 36 percent of the market. Ten years later, their share had doubled, to 72 percent.

As mentioned above, today the share of the market controlled by the four biggest meatpackers has swelled to 82 percent. In pork, the four biggest packers control 63 percent. In poultry, the four largest broiler companies—Tyson, Pilgrim’s Pride, Perdue, and Sanderson—control 53 percent of the market. In all these sectors—but especially poultry—these numbers greatly understate the political effects of concentration. At the local level, which is what matters to the individual farmer, there is increasingly only one buyer in any region.

The practical result of all this consolidation is that while there are still many independent farmers, there are fewer and fewer processing companies to which farmers can sell. If a farmer doesn’t like the terms or price given by one company, he increasingly has nowhere else to go—and the companies know it. With the balance of power upended, the companies are now free to dictate increasingly outrageous terms to the farmers.

At the hearing in Alabama in 2010, poultry farmers laid out how the arrangement now works. Staples, for example, described how processing companies routinely demand equipment upgrades that push independent farmers into heavy debt. In order to keep up with the companies’ facility requirements, farmers often must mortgage their farms and homes. With contracts often lasting only sixty days, and no real option to switch processing companies at the end of the contract period, farmers must either accept the terms they’re given—and stay on the company’s good side—or risk bankruptcy. “[W]ith the contracts that we’re offered now it’s either a take-it or leave-it situation,” Staples said.

Tom Green, another Alabama farmer at the hearing, recounted what happened when he contested a contract that included a mandatory arbitration clause that would take away his right to a jury trial if a dispute arose. When he took issue with the clause, the processing company refused to work with him. Absent other options, Green and his wife, Ruth, lost their farm. “Ruth and I chose to stand up for our principles,” Green, a former infantryman and pilot in Vietnam, said at the hearing. “We did not give up a fundamental right to access the public court … which is guaranteed by our Constitution, regardless of price. I had flown too many combat missions defending that Constitution to forfeit it. It was truly ironic that protecting one right, we lost another. We lost the right to property.”

Of all the abuses farmers described to officials in Alabama, the one they kept returning to was the “tournament system,” a payment scheme designed, according to the processing companies, to promote efficiency among farmers. Unlike a traditional market, where every pound of chicken of the same grade fetches the same price, the tournament system allows companies to pit one farmer against another by ranking each farmer based on how he performs in “competition” against his fellow farmers. The idea is that the healthier and heavier the chickens a farmer produces with a set amount of feed, the higher he’s ranked in relation to the entire set of farmers who deliver their birds to the same processing plant on that same day. The higher he’s ranked, the more a processing company pays him per pound.

One problem with the tournament system is that no standards regulate the quality of feed and chicks that processing companies deliver to farmers, which means there’s no way for a farmer to know if he’s getting the same inputs as the other farmers against whom the company makes him compete. Another problem is that the processing companies often weigh the full-grown chickens behind closed doors, out of the sight of the farmer who raised them. This enables the companies to favor or punish whichever farmers they, or their local foremen, choose. Any farmer who complains about the system, or about the specific provisions of a contract, or who even signs some sort of petition that a processing company doesn’t like, risks seeing his “earnings” arbitrarily cut.

Farmers are still expected to own their own land and to bear all the risks of investing in facilities, like chicken houses, just as they did when they sold into fully open and competitive markets. But almost all the authority over how they run their farm and what they earn now belongs to the companies. “A modern plantation system is what it is,” said Robert Taylor, a professor of agriculture economics at Auburn University who has worked with poultry farmers for close to three decades. “Except this is worse, because the grower provides not just the labor, but the capital, too.”

In most other industries, labor law protects workers from such forms of manipulation and exploitation. Farmers, though, aren’t protected under labor law because—at least until recently—it was assumed that open market competition enabled them to take their business to another buyer. Today, however, even as they become more like employees, laboring for a single company, the law still treats farmers as if they were their own masters. “The shift to vertical integration means that farmers no longer own what they are producing,” explains Mark Lauritsen, director of the food processing, packing, and manufacturing division at United Food and Commercial Workers, the union that represents workers across many industries, including agriculture and food processing. “They are selling their labor—but they don’t have the rights that usually come with that arrangement.”

The specific type of contract and the payment scheme offered by companies vary by sector, and the hearings indicated that the worst practices are generally found in the poultry industry. What applies across the board—in cattle ranching and dairy and hog farming—is the stark and growing imbalance of power between the farmers who grow our food and the companies who process it for us, and how this imbalance enables practices unimaginable in any competitive market.

Watts, the farmer who drove from North Carolina to attend the Alabama hearing, says he and his fellow poultry farmers are independent only in name. “What I can make through my work is entirely dictated by many hands before it ever gets to me,” he said in an interview. “My destiny is no longer controlled by me.”

Farmers and activists have been fighting to restore fair agriculture markets since the 1980s with little to show for it. Both Democratic and Republican senators have periodically introduced legislation to level the playing field for independent farmers and ranchers, but those measures have repeatedly collapsed under the weight of corporate lobbies.

Most consequentially for farmers, the once-groundbreaking Packers and Stockyards Act has been weakened over the decades by both the courts’ and the executive branch’s narrow interpretation of its broad, sometimes ambiguous language. As a result, the act is no longer sufficiently powerful to protect their rights. The administration of George W. Bush essentially halted enforcement of the act entirely. In 2006 the USDA’s own inspector general reported that the agency responsible for enforcing the act, the Grain Inspection, Packers and Stockyards Administration (GIPSA), had been deliberately suppressing investigations and blocking penalties on companies violating the law. The inspector general found that Deputy Administrator JoAnn Waterfield was hiding at least fifty enforcement actions in her desk drawer.

In 2008, independent farmers seemed at last to have caught two big breaks. First, in the 2008 Farm Bill, Congress instructed the USDA to revise and update specific issues that the eighty-year-old act either had never addressed or had left overly vague. As the agency regulating the Packers and Stockyards Act, the USDA, and, more specifically, its subsidiary body GIPSA, already had the power to revise and supplement its laws. Now it had a political mandate to do so, too.

The second big break came during the 2008 campaign, when Senator Barack Obama spoke directly about the need to address such abuse of independent farmers. Four days before the Iowa caucus, he even organized a conference call with independent farmers to discuss their concerns. In the primary, the farmers’ votes swung toward Obama, helping him beat Hillary Clinton and making him a serious contender for the nomination. In the general election, the appeal may have helped Obama win some rural, traditionally Republican counties in Colorado and North Carolina.

Some farmers and activists criticized Obama’s choice of Vilsack, a former governor of Iowa, to lead the Agriculture Department, mainly because of his close ties to biotech companies, including Monsanto. But the administration soon balanced this out by appointing Mississippi rancher and trial attorney Dudley Butler to head GIPSA. Farmers and ranchers trusted Butler, who had been a private lawyer for thirty years and had long been on the front lines representing chicken farmers against processing companies.

In August 2009, eight months into Obama’s first term, the administration announced plans for a series of hearings the following year—the most high-level examination of agriculture in decades, overseen by the new antitrust chief, Christine Varney. At the opening event in Ankeny, Iowa, in March 2010, Attorney General Holder spoke boldly, assuring the crowd that reform was now a Cabinet-level priority. “Big is not necessarily bad, but big can be bad if the power that comes from being big is misused,” he said. “That is simply not something that this Department of Justice is going to stand for. We will use every tool we have to ensure fairness in the marketplace.”

Over the next nine months, officials held another four full-day hearings, in Alabama, Wisconsin, Colorado, and Washington, D.C., to investigate the poultry, dairy, cattle, and seed industries, as well as to look at the discrepancy between the price consumers pay for food and the price farmers receive for producing it. Each hearing featured several panels with a range of perspectives, and each included time for comments from many of the thousands of farmers, ranchers, industry representatives, activists, and academics who attended. In addition to the hours of testimony collected publicly, the administration provided computers in adjacent rooms where those reluctant to speak out could privately register their concerns and fears.

The administration also consulted experts like Taylor, the professor at Auburn University. At one point, the USDA sent an entire team of economists and lawyers to Alabama with a full day’s worth of questions. “It was clear these were conscientious, committed officials who had spent a lot of care investigating the issues,” Taylor said.

During the course of the hearings, the USDA also began to address Congress’s 2008 Farm Bill instruction that the department revise and update elements of the Packers and Stockyards Act. By midsummer, the USDA had rolled out a series of far-reaching revisions, addressing many of the farmers’ concerns. One of the proposed changes would have specifically banned company retaliation against farmers who tried to negotiate the terms of a contract. Another would have required any company that forced farmers to make capital investments to offer contracts long enough for the farmers to recoup some minimum amount of that investment. This series of proposed updates and revisions to the Packers and Stockyards Act later came to be known collectively as the “GIPSA rules.”

While updating an old law might not sound like a big deal, farmers widely regarded the proposed GIPSA rules as serious game changers. “Before, they would throw us a little bone once in a while,” Watts said. “But with these rules we knew they meant business.”

Because the USDA has the legal authority to revise the rules under the Packers and Stockyards Act, Congress didn’t actually have to formally vote on the new rules. Congress has the right to discuss them and request additional information, but it has no direct authority over them. In the Senate, Tom Harkin, Chuck Grassley, and Tim Johnson, longtime advocates of reform in the agriculture industry, voiced their support for the proposed updates. Many House members, however, began to attack the rules, especially once the processing companies came out strongly against them.

In July 2010, less than a month after the USDA published its proposed rules, the House Agriculture Committee, which was led by Michigan Minnesota Democrat Collin Peterson, called a hearing to question USDA officials on the revisions. At the hearing a group of mostly Republican lawmakers, joined by Jim Costa of California and a few other Democrats, assailed the proposed rules for their wide-reaching impact. They accused the USDA of ignoring the concerns of industry groups like the National Cattlemen’s Beef Association and the National Chicken Council, which represent processing companies like Cargill and Tyson. After the House hearing, the USDA agreed to extend the period for public comments on the proposed rules from the regular sixty days to a total of 150.

Then, in October, House members—led by Peterson, Agriculture Committee Ranking Member Frank Lucas (Republican from Oklahoma) and Livestock, Dairy, and Poultry Subcommittee Chairman David Scott (Democrat from Georgia) and Ranking Member Randy Neugebauer (Republican from Texas)—delivered a letter to Vilsack. The letter argued that the USDA, despite nationwide hearings and dozens of investigations, interviews, and fact-finding missions, had not sufficiently justified the need for some of the new farmer protections, and urged the agency to subject the rules to more thorough economic analysis. The letter was signed by sixty-eight Republicans and forty-seven Democrats.

In the November 2010 midterm elections, a surge of successful Tea Party candidates handed Republicans control of the House. In the aftermath of the election, the administration continued its reform efforts. If anything, by the last of the five hearings in December the tone of the reformers had become more radical, centering on the political and moral nature of what many American farmers now suffer. “We’ve got to be looking at power,” explained Bert Foer, head of the American Antitrust Institute, at the hearing. “We’ve got to be looking at the negotiating realities that occur in the marketplace and not simply what the effect on the consumer price is going to be.”

But in the new year, a new political reality set in. In January 2011, Obama appointed Bill Daley, former commerce secretary and top executive at JPMorgan Chase, as his chief of staff. Part of a wider post-election shake-up at the White House, Daley’s appointment signaled that the administration was now intent on compromising with Republicans, especially on economic issues. Many Republicans, though, viewed the election as a mandate for even more radical obstruction.

In February 2011, the House Agriculture Committee again pushed Vilsack on the economic analysis of the proposed Packers and Stockyards rules, and over the next few months various subcommittees orchestrated hearings for trade groups to voice their objections. According to one industry report, paid for by the National Meat Association, the proposed USDA rules would levy a $1.64, billion blow to the meat industry and lead to 22,800 job losses. The report also claimed that the rules would, over time, decrease beef, pork, and poultry production across the board.

In May 2011, Costa, the Californian Democrat, Reid Ribble, a House Republican from Wisconsin, and Lucas, now the chairman of the Agriculture Committee, circulated a letter asking Vilsack to withdraw all proposed rule changes entirely. “[W]e are confident that any such rule will not be looked upon favorably by Congress,” the congressmen wrote. Though their letter was signed by 147 members—more than a third of the House, including twenty-five Democrats and thirty Tea Party Republicans—the USDA didn’t accede to the request. But officials did begin to water down the proposed rules.

The next month, in June 2011, the House Appropriations Committee included a crucial rider in its funding bill. The rider was designed to strip the USDA of the funds it needed to finalize and implement the strongest of the proposed rules. Farmers and activists tried to fight the rider, which was backed by corporate livestock and poultry lobbies. Advocacy groups flew in farmers from around the country to meet with members of Congress, and 6,000 people called in to the White House to express their support. During a debate over the rider, Ohio Democrat Marcy Kaptur, the only representative to come out strongly in favor of the rules, slammed the House for “standing with the few big meatpackers and against the many thousands and thousands of producers.” Even the American Farm Bureau, a group that often champions policies favorable to agribusiness, wrote an open letter to Congress opposing the rider.

But the farmers and activists found that they were now largely alone. By late 2011, the administration was in full retreat. “The White House and USDA became very timid and really didn’t do much to disabuse the critics spreading untruths about the reforms,” said Patrick Woodall, research director with Food & Water Watch, which organized some of the efforts in support of the proposed rules. “They all fell silent.”

The Senate supported the Packers and Stockyards revisions in its appropriations bill in September 2011. But the House, as Woodall put it, “went on a full-out offensive,” holding hostage everything from food stamps to food-safety measures. “Nobody wants to have to defend a policy position where the victims are low-income kids, and that’s where the balance ultimately was,” Woodall said. Even Senators Harkin and Johnson, who only a month earlier had strongly voiced their support for the GIPSA rules, backed down.

By November 2011, it was clear that the reformers had lost. The rider had passed. The rules as they had been intended were dead. The most ambitious, far-reaching campaign to reform the agricultural industry in forty years was over, less than two years after it had begun.

In early December, the USDA published four watered-down revisions and updates to the Packers and Stockyards Act. The only full-fledged rule to come into effect prohibits mandatory arbitration clauses in poultry farmers’ contracts—vindication for many, including Tom Green and his wife, Ruth, but hardly a sweeping victory. The other three revisions are vague “guidelines” for the USDA. None of them explicitly prohibit arbitrary and exploitative conduct by the processing companies under the notorious tournament system.

In January 2012, Butler resigned from the USDA. Then in May, the DOJ quietly published a report summarizing the five nationwide hearings conducted in 2010. The report detailed both a lack of competition in the industry and abusive behavior. It went on to claim that the DOJ couldn’t act to address these wrongs because, no matter how outrageous the conduct of the processing companies, their actions did not amount to “harm to competition” as defined by the current antitrust framework.

#### Quickly secures the vulnerable grid.

Carney ’21 [Chris, August 6; Senior Policy Advisor at Nossaman LLC, former US Representative, Former Professor of Political Science at Penn State University; JD Supra, “The US Senate Infrastructure Bill: Securing Our Electrical Grid Through P3s and Grants,” https://www.jdsupra.com/legalnews/the-us-senate-infrastructure-bill-4989100/]

As we begin to better understand the main components of the Infrastructure Investment and Jobs Act that the US Senate is working to pass this week, it is clear that public-private partnerships ("P3s") are a favored funding mechanism of lawmakers to help offset high costs associated with major infrastructure projects in communities. And while past infrastructure bills have used P3s for more conventional projects, the current bill also calls for P3s to help pay for protecting the US electric grid from cyberattacks. Responding to the increasing number of cyberattacks on our nation’s infrastructure, and given the fragile physical condition of our electrical grid, the Senate included provisions to help state, local and tribal entities harden electrical grids for which they are responsible.

Section 40121, Enhancing Grid Security Through Public-Private Partnerships, calls for not only physical protections of electrical grids, but also for enhancing cyber-resilience. This section seeks to encourage the various federal, state and local regulatory authorities, as well as industry participants to engage in a program that audits and assesses the physical security and cybersecurity of utilities, conducts threat assessments to identify and mitigate vulnerabilities, and provides cybersecurity training to utilities. Further, the section calls for strengthening supply chain security, protecting “defense critical” electrical infrastructure and buttressing against a constant barrage of cyberattacks on the grid. In determining the nature of the partnership arrangement, the size of the utility and the area served will be considered, with priority going to utilities with fewer available resources.

Section 40122 compliments the previous section as it seeks to incentivize testing of cybersecurity products meant to be used in the energy sector, including SCADA systems, and to find ways to mitigate any vulnerabilities identified by the testing. Intended as a voluntary program, utilities would be offered technical assistance and databases of vulnerabilities and best practices would be created. Section 40123 incentivizes investment in advanced cybersecurity technology to strengthen the security and resiliency of grid systems through rate adjustments that would be studied and approved by the Secretary of Energy and other relevant Commissions, Councils and Associations.

Lastly, Section 40124, a long sought-after package of cybersecurity grants for state, local and tribal entities is included in the bill. This section adds language that would enable state, local and tribal bodies to apply for funds to upgrade aging computer equipment and software, particularly related to utilities, as they face growing threats of ransomware, denial of service and other cyberattacks. However, under Section 40126, cybersecurity grants may be tied to meeting various security standards established by the Secretary of Homeland Security, and/or submission of a cybersecurity plan by a grant applicant that shows “maturity” in understanding the cyber threat they face and a sophisticated approach to utilizing the grant.

While the final outcome of the Infrastructure Investment and Jobs Act may still be weeks or months away, inclusion of these provisions not only demonstrates a positive step forward for the application of federal P3s and grants generally, they also show that Congress recognizes the seriousness of the cyber threats our electrical grids face. Hopefully, through judicious application of both public-private partnerships and grants, the nation can quickly secure its infrastructure from cyberattacks.

#### Grid vulnerabilities spark nuclear war.

Klare ’19 [Michael; November; Professor Emeritus of Peace and World Security Studies at Hampshire College; Arms Control Association, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation,” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation]

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.12 The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.13

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”14

## States CP

States CP:

The 50 states and relevant subnational entities should establish a presumption against mergers and acquisitions among agribusiness firms and should induce and engage China to establish a presumption against mergers and acquisitions among agribusiness firms.

#### State coordination solves – multistate litigation and enforcement bureaus overcome deficits.

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[2] In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[3] This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[4] Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[5]

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[6] As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[7] This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[8]

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[9] Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[10] These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[11] The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[12] No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[13] To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[14]

#### States can challenge agricultural monopolies and survive legal challenges.

Wiley ’15 [Lindsay F.; 2015; Associate Professor of Law at American University, Washington College of Law. A.B., Harvard University, J.D., Harvard Law School; American Journal of Law & Medicine, “Deregulation, Distrust, and Democracy: State and Local Action to Ensure Equitable Access to Healthy, Sustainably Produced Food,” vol. 41 p. 284-314; kp]

Our food system is hotly contested territory. In the midst of widespread concern about obesity-related disease and toxic exposures, manufacturers have flooded the market with products touted as “natural,” “organic,” and “GMO-free,” including many that are high in sugar, salt, and fat. Consumers are demanding more information about the food and beverage products they buy and the ways in which they are produced.13 At a time when federal regulation to protect the public’s health, consumers, and the environment has been stymied by legislative inaction and constraints on agency rulemaking, state and local governments have taken on a high-profile role in “regulating to the detriment of politically powerful industries and their allies for the purpose of conferring diffuse benefits on the public.”14 City, county, and state governments have become crucial innovators, particularly in areas such as tobacco control, obesity prevention, Genetically Modified Organisms (GMOs), and pesticide use. Industry groups are responding with increasingly sophisticated litigation and legislation strategies, using the First Amendment, Due Process, Equal Protection, federalism, and separation of powers constraints to challenge and preempt food system regulations. In this Part, I introduce four recent cases that illustrate the complexity of these issues.

A. VERMONT’S GMO DISCLOSURE MANDATE AND ADVERTISING RESTRICTIONS: GROCERY MANUFACTURERS ASSOCIAITION V. SORRELL

A little more than forty years after the discovery of recombinant DNA15 and twenty years after the U.S. Food and Drug Association (FDA) first approved an additive used to produce GM foods,16 GM crops and foods are now ubiquitous. About 70-80% of foods purchased for home consumption and sold in restaurants contain at least one GM ingredient.17 About half of U.S. cropland was seeded with GM crops in 2013, including 93% of soybean acreage and 90% of corn acreage.18 In spite of, or perhaps because of, the dominant presence of GM products in our food system and repeated assurances from federal agencies that they are safe, the majority of Americans express concern about their safety and environmental impacts.19 In surveys, consumers overwhelmingly favor mandatory labeling of GM foods,20 though statewide ballot measures in California, Washington, Colorado, and Oregon have been unsuccessful.21

Proponents of genetic modification argue that GM products (ranging from bacteria that break up spilled oil to treatments for diabetes and malaria to high-beta-carotene rice that prevents nutrient deficiencies) have given scientists and policymakers new tools for feeding people, saving lives, and protecting the environment.22 Critics express concerns about health, environmental, and economic impacts. GM foods can introduce new allergens into the food system.23 GM crops may reduce growers’ use of highly toxic herbicides in the short run (by increasing the effectiveness of less toxic alternatives like glyphosate), but in the long run they may simply speed up the development of weeds’ resistance to less toxic herbicides.24 Reliance on GM crops reduces biodiversity.25 GM seeds contaminate non-GM crops,26 causing economic harm to growers who wish to certify their products as GM-free.27 The market dominance of GM seeds increases growers’ economic dependence on a small number of seed manufacturers.28

Footnote starts.

28 Robert Langreth & Matthew Herper, The Planet Versus Monsanto, FORBES (Dec. 31, 2009, 4:40 PM), http://www.forbes.com/forbes/2010/0118/americas-best-company-10-gmos-dupont-planet-versus- monsanto.html (describing the antitrust concerns surrounding Monsanto, which ~~cripples~~ [devastates] smaller seed companies due to its high market share).

Footnote ends.

More serious health concerns—ranging from birth defects, to liver failure, to a wide range of cancers—have been raised by GM critics, but are not supported by reputable scientific sources. 29

There is no federal statute specific to GMOs.30 Pursuant to the Coordinated Framework for Regulation of Biotechnology,31 which emphasizes that “regulatory oversight should focus on the characteristics and risks of the biotechnology product— not the process by which it is created,”32 federal agencies treat GM foods as equivalent to foods developed using traditional cross-breeding techniques.33 GMO producers are subject to generally applicable health, safety, and environmental statutes.34 The FDA has provided nonbinding guidance on voluntary labeling of GM foods,35 but has not imposed restrictions on genetic modification in food production.36 The U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) regulates planting and interstate transportation of GMOs that pose a plant pest risk.37 The U.S. Environmental Protection Administration (EPA) regulates GM plants that produce substances intended to control pests (called plant-incorporated protectants) for environmental safety and safety for use in food.38 The EPA also regulates GM microorganisms under the Toxic Substances Control Act.39 Additionally, agencies taking certain actions with regard to GMOs may be required to prepare Environmental Assessments or Environmental Impact Statements under the National Environmental Policy Act.40

Frustrated by the lack of more rigorous regulation of GMOs and the GM production process at the federal level, several state and local governments have stepped in.41 In May 2014, Vermont became the first state to enact a GM foods labeling mandate.42 Citing “multiple health, personal, religious, and environmental reasons,”43 Act 120 would require GM foods44 to be labeled as “produced with genetic engineering,” “partially produced with genetic engineering,” or “may be produced with genetic engineering.”45 It would also prohibit such foods from being marketed using the words “natural,” “naturally made,” “naturally grown,” “all natural” or “any words of similar import that would have a tendency to mislead a consumer.”46 Violation of either provision would be punishable by civil fines of up to $1000 per product, per day.47 Act 120 authorizes the Attorney General to adopt rules requiring that mandated labels “include a disclaimer that the Food and Drug Administration does not consider foods produced from genetic engineering to be materially different from other foods” and to harmonize Vermont’s labeling requirements with those adopted by other jurisdictions.48

In June 2014, the National Association of Manufacturers, the International Dairy Foods Association, the Snack Food Association, and the Grocery Manufacturers Association filed a complaint in federal court alleging that Act 120: (1) violates their First Amendment right “to speak freely and the right to refrain from speaking at all”;49 (2) violates the Fifth Amendment’s requirement that “state laws define prohibited conduct with sufficient specificity” so as to afford regulated entities “reasonable notice” and avoid subjecting them to “arbitrary enforcement of the laws”;50 (3) violates the Commerce Clause’s implied prohibition on state regulation of interstate commerce;51 and (4)is expressly or impliedly preempted by the Federal Food, Drug, and Cosmetic Act (FFDCA), the Nutrition Labeling and Education Act (NLEA), the Federal Meat Inspection Act, and the Poultry Products Inspection Act.52

As of this writing, the case was pending in the federal district court, with industry groups, food reform advocates, and other state and local governments watching it closely. GMO labeling legislation has been introduced in more than twenty jurisdictions, including via voter referendum.53 Commentators have suggested that labeling laws represent the best solution to the debate over the potential health risks of GM foods and have argued that state and local labeling laws should be upheld in the face of constitutional challenges.54

## Subsidies CP

#### Subsidies CP:

#### The United States federal government should provide agriculture subsidies only for farms that use sustainable practices.

#### The CP is a massive incentive to transition to sustainable practices

Eubanks '13 - Summer Faculty Member, Vermont Law School; Adjunct Associate Professor of Law, American University Washington College of Law   
[William, "The Future of Federal Farm Policy: Steps for Achieving a More Sustainable Food System," 37 Vt. L. Rev. 957 (2013)]

Therefore, instead of immediately eliminating the farm bill subsidies on which many farms now rely for survival, Congress should instead shift a substantial portion of these subsidies—in phases—to farmers implementing sustainable agricultural methods. Past and current conservation programs often had a major flaw: they target only large commodity crop growers. A more workable policy would be to offer a predetermined share of subsidy incentives to all farmers based on their farming practices, irrespective of crops cultivated or farm size. This would create a more just system than the current subsidy framework that excludes 60% of American farmers from any subsidies whatsoever.13

Farmers who never see farm bill subsidies in our current system are typically those who grow crops using environmentally sustainable agricultural methods and those who grow most of the nation’s fruits, vegetables, and nuts, which are called “specialty crops” in the farm bill, but are critical for good health. It should be noted that the two sets of farmers are not necessarily the same. Growers in California provide a vivid example of the current failures of the farm bill’s subsidy program to reward farmers for growing healthy food for our nation. With nearly 81,500 farms, and nearly $43.5 billion in annual on-farm revenues, California is the leading state in annual agricultural sales.14 Despite this, more than 90% of California’s farmers receive no agricultural subsidies.15 Of the few Californian farmers that do receive farm bill subsidies, most are cotton and rice farmers.16 Yet these subsidy-neglected California farmers are invaluable to our nation’s agricultural system because the state contributes more than 15% of the total U.S. agricultural market value and nearly half of all fruits, nuts, and vegetables.17 By ignoring these farmers and precluding them from receiving farm bill subsidies, Congress is prioritizing monocultures of corn, soybean, wheat, cotton, and rice at the expense of sound agricultural, nutritional, and environmental practices.18

Sustainable agriculture, however, can serve as a first step in changing these policies for the better. What is “sustainable agriculture”? According to the scholar James Horne, sustainable agriculture “encompasses a variety of philosophies and farming techniques . . . [that] are low chemical, resource and energy conserving, and resource efficient.”19 Ironically (because it did little to encourage such agriculture), the 1990 farm bill defined sustainable agriculture as: an integrated system of plant and animal production practices having a site-specific application that will, over the long term, satisfy human food and fiber needs; enhance environmental quality and the natural resources base upon which the agricultural economy depends; make the most efficient use of nonrenewable resources and on-farm/ranch resources; and integrate, where appropriate, natural biological cycles and controls; sustain the economic viability of farm/ranch operations; and enhance the quality of life for farmers/ranchers and society as a whole.20 As most agricultural experts note, it is important to understand that “[s]ustainable agriculture does not mandate a specific set of farming practices.”21 Rather, sustainable practices vary from place to place depending on the ecosystem, climate, and other factors, but “[t]here are myriad approaches to farming that may be sustainable.”22 The more important overarching goal of sustainable agriculture is the “stewardship of both natural and human resources . . . includ[ing] concern over the living and working conditions of farm laborers, consumer health and safety, and the needs of rural communities.”23

## Agriculture

#### food Internal link cards are about american agriculture - the impact cards are about GLOBAL infrastructure.

#### Internal to democracy is TECH COMPANIES and GENERAL American consolidation - #1 corporate threat to democracy is NOT monsanto and some seeds BUT RATHER misinfo campaigns on facebook - not to mention EVERY OTHER problem with american democracy -gerrymandering, failure to promote democracy globally, money in politics, voting restrictions, an unconstrained supreme court, etc.

### Industrial ag good

#### Ag monopolies and vertical integration are necessary to an efficient food system.

Nordhaus '21 - founder and executive director of the Breakthrough Institute  
[Ted and Dan Blaustein-Rejto; Apr 18; "Big Agriculture Is Best;" https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/]

Much of the criticism of big agriculture focuses on the monopolistic power of food processors like Archer-Daniels-Midland and Tyson Foods. But the bigger problem is arguably that there is too little vertical integration of food processors with food producers and landowners. Today, big food processors are able to take an outsized share of the profits from the food system while pushing the economic risk onto those further down the supply chain. Many large farmers, meanwhile, lease rather than own much of the land they farm, with much of America’s farmland owned by absentee landowners.

The resulting economic arrangements are rife with what economists call principal-agent problems. Many farmers don’t have incentives to invest in the long-term productivity of the land they farm because they don’t own it nor do they have the means to invest in cutting-edge capital equipment and technology.

These problems are exacerbated by the fact that many farms are family-owned but have no prospect for generational succession, as children continue to choose to pursue greener non-pastures off the farm. So for farmers who don’t own the land they farm, don’t have heirs to pass the farm on to, or both, investing time and money in technology and practices to improve land productivity over the long term does not make sense.

The prospect that a few large corporations could ultimately not only process but own much of America’s farmland and grow much of its food will strike many as fundamentally wrong. But it is likely where we are heading one way or another, as farming has always been a tough business to stay in, much less get into, and fewer and fewer Americans have any interest in doing so.

Vertical integration might bring significant benefits. Big agricultural corporations would have significantly greater incentive to invest resources into the long-term improvement of the land they own and farm, implement evidence-based farming practices, and spend on capital-intensive technology.

Large companies are also, counterintuitively, more responsive to demands for social responsibility, not less so. It is large, multinational corporations, not smaller regional operators, for instance, that have been willing to make zero-deforestation commitments in places like Brazil. That’s because, even though they can leverage their size and economic power to thwart reform, they are also easier to target, pressure, and regulate than more decentralized industries.

For these reasons, a food system that is bigger, more consolidated, and more vertically integrated might actually deliver better social and environmental outcomes than the one we have today. Either way, big farms and big agriculture are here to stay. They are a fundamental feature of global modernity, not a conspiracy by capitalists and corporations to poison people or the land.

Ultimately, improving the U.S. food system will require, first, appreciating it for the social, economic, and technological marvel that it is. It feeds 330 million Americans and many millions more around the world. It has liberated almost all of us from lives of hard agricultural labor and deep agrarian poverty. It has allowed forests to return across much of the United States while also sparing forests in many other parts of the world. It does all this while being extraordinarily efficient environmentally. A better food system will build on these blessings, not abandon them.

#### Only intensification can prevent zoonotic disease outbreaks and preserve biodiversity.

Smith '20 - Food and Ag Analyst @ Breakthrough   
[Alex; Apr 13; "To Combat Pandemics, Intensify Agriculture;" https://thebreakthrough.org/issues/food/zoonosis]

A number of activists and opinion writers have recently argued that SARS-CoV-2, the virus that causes COVID-19, can be traced back to “industrial” and “intensive” agriculture. In a Sierra Magazine piece titled “Blame It on the Farm Too,” Ashia Ajani points a finger at “Western-influenced farming practices” as a main cause of our current zoonotic outbreak and possible further outbreaks.

But these claims offer no explicit argument for how a different form of agriculture — outside of calls to completely eliminate meat consumption — would reduce risk, and they often conflate intensive animal agriculture with intensive agriculture writ large. More fundamentally, these claims point in the wrong direction. If anything, intensification is the solution to reducing the risk of zoonotic disease, not the problem, mainly because it addresses the real underlying causes of zoonosis: land-use change and food insecurity.

First, we should put to rest the argument that COVID-19 has direct ties to factory farming. As most of us know, SARS-CoV-2 has been connected to a wet market in Wuhan, China where wildlife like pangolins, civets, and more were sold alongside butchered meat and other foods. Like SARS before it, the novel coronavirus is assumed to have its origins in bats, but was spread from bats to an intermediary host — potentially a pangolin — before infecting humans.

Intensification is the solution to reducing the risk of zoonotic disease, not the problem, mainly because it addresses the real underlying causes of zoonosis.

Many point to the conditions of the wildlife at the wet market — cages of live animals stacked on top of other live animals — as a perfect storm for zoonotic disease outbreaks, but the underlying cause is the consumption of wildlife. And as Elizabeth Maruma Mrema, the acting executive secretary of the UN Convention on Biological Diversity, explained to The Guardian, the hunger — often literally starvation — that drives consumption of wildlife ought to be cut off at the source, and until we can provide alternatives to wildlife trade and consumption, the problem will persist.

For some, the practice of wildlife consumption in China has direct links to the rise of industrial agriculture in the last quarter of the twentieth century. But the consumption of wildlife and exotic animals in China is historically rooted in food insecurity and, in fact, a failure to industrialize agriculture. According to journalist Brian Barth, Chinese consumption of wildlife stems from the 1970s decision to conclude the Maoist collective farming experiment — an experiment that saw severe famine and food shortages over the previous decades. The goal, instead, was to industrialize agriculture, but a lack of resources and funding meant that the state could not supply rural farmers with the means to industrialize and take advantage of economies of scale. Instead, those farmers who could not benefit from agricultural industrialization took up exotic animal farming as a new source of income.

As Chinese agriculture intensified throughout the following decades, exotic animals remained a part of certain regional diets. Up until the outbreak of the novel coronavirus, these animals were eaten both because of their cultural significance for traditional Chinese medicine, and as a means of demonstrating upward mobility and wealth.

The most important factor in the development of new zoonotic diseases is land-use change.

There is broad agreement in the epidemiological and virological studies of zoonoses that the most important factor in the development of new zoonotic diseases is land-use change. The development of wild lands, whether caused by agricultural extensification, mining, or other factors, simultaneously shrinks the habitat of wildlife and brings that wildlife in close proximity to human settlements. The combination of shrinking habitats, human-wildlife interactions, and food insecurity is a recipe for zoonosis. In West Africa, these three factors combined were responsible for HIV/AIDS and the slew of recent Ebola outbreaks.

Even when food insecurity and the consumption of wildlife are taken out of the equation, land-use change is a powerful driver of zoonotic disease, and has resulted in outbreaks of zoonotic diseases like malaria, yellow fever, dengue fever, Nipah virus, West Nile virus, Zika virus, and Lyme disease. Often, these diseases are transmitted from animals to humans through an intermediary, sometimes an insect (mosquitoes or ticks) and sometimes through livestock that live too close to wildlife populations, as was the case with Nipah.

Because the biggest driver of land-use change is agriculture, “intensive” high-yield agriculture often takes the blame, but the alternative — extensive, low-yield farming — would be worse. To prevent further pandemics, we must do as much as we can to stop land-use change while improving food security. We must, in other words, improve agricultural yields, allowing us to grow more food on less land. So, contrary to what many have asserted, a vital lever for limiting land-use change and providing cheap food for all is not to abandon intensive agriculture, but to intensify it further, especially in the developing world where food insecurity is greatest and where growing populations means rising food demand.

It is thanks to rising yields that farmers, globally, produce about three times the amount of crops while only using 13% more land than in 1950. For example, if yields from cereal production hadn’t increased since 1961, the global agricultural footprint would be 24% larger than it is today — increasing from roughly 50% at current levels to 62% of total habitable land — and would likely have resulted in even deadlier zoonotic outbreaks.

Figure 1, Our World In Data - “Crop Yields”

Alongside reducing deforestation and land-use change and improving food access and security, sustainably intensifying agriculture across the globe would benefit biodiversity by protecting habitats and keeping them from agricultural development. While monoculture means less biodiversity on farmland, the productivity gains of monocropping — and other intensive agricultural practices — allow for the sparing of far greater land that can be used as habitat for wild flora and fauna. Certainly, agricultural intensification alone is not enough to maximize land-sparing benefits, as improved conservation and land policy is needed to minimize rebound effects. But greater productivity is likely the longest lever for achieving ambitious conservation goals.

The spread of intensive agriculture has come with rising nitrogen run-off, methane emissions, and other environmental impacts. These are real problems, but their solution is the continued improvement of intensive systems. In fact, we are already seeing reductions in many environmental impacts from agriculture in countries where intensive agriculture is prevalent, such as the US.

In addition to intensifying agriculture generally, we must manage the risk from animal agriculture in particular. Activists and scientists are correct that reducing animal agriculture, or even eliminating it, would drastically reduce risk of zoonoses. But because the likelihood of a global switch to a plant-based diet is low and would in fact harm the hundreds of millions of smallholder farmers reliant on animal agriculture, we must seek out ways to both intensify animal agriculture and make it safer.

Worries about increased virulence of influenza strains and antibiotic resistance due to poorly managed low-dose usage of antibiotics on intensive animal agriculture are well-founded and downright scary. Alternatively, and potentially more importantly, animal agriculture, even the most intensive forms, requires huge amounts of land for either grazing animals or growing feed. In fact, beef production may be the largest driver of Amazonian deforestation. And, when animal agriculture encroaches on previously unmanaged wildlands, the risk of zoonotic diseases drastically increases as viruses can jump from wild to domesticated animals.

Technology has already helped improve the efficiency, sanitation, and health of cattle, pork, and chicken in the United States — for example, advances in veterinary and farm engineering have greatly reduced disease rates among american pigs — but there are many stones left unturned. Increased R&D, improved regulatory practices, and greater transparency are all clearly needed to ensure global meat production can be efficient, sustainable, and biosecure.

With our global population set to increase by close to 3 billion by 2050, we must strive to construct a world that can provide food, shelter, and livelihoods to all 10 billion people, while reducing risk of pandemics akin to what we see today. Simply, the only way forward is forward. We must continue to develop agricultural innovations that can allow for increased intensification, and we must give these innovations global reach. It does not work to just intensify agricultural production in developed countries, given the dual role of land-use change and food insecurity. To combat the main drivers of zoonotic diseases, we must sustainably intensify our food system, not pine for a romanticized and inefficient production system that brings people and wild animals in closer contact.

#### Reducing the amount of land needed for farming is necessary to prevent extinction.

Lynas ‘16 - visiting fellow at Cornell University’s College of Agriculture and Life Sciences   
[Mark, "Peak farmland is an ecological imperative," Dec 18, https://thebreakthrough.org/index.php/issues/the-future-of-food/responses-is-precision-agriculture-the-way-to-peak-cropland/peak-farmland-is-an-ecological-imperative]

Along with rapidly reducing greenhouse gas emissions, reaching 'peak farmland' is probably the world's most important environmental objective. However, it is far less well-known, and is not advocated as a target to my knowledge by any major environmental organization. The reason for this is doubtless because most of the agricultural policies long advocated by the green movement would serve to take us further away from peak farmland rather than towards it. It should be fairly obvious why peaking farmland expansion is important. Biodiversity loss ranks alongside climate change as an existential threat to the Earth's ecological systems, and conversion of land to agriculture and the resultant loss of habitat is in turn the greatest single threat to biodiversity. There is no prospect of sparing large areas of wilderness from the curse of the plough without halting the conversion of nature to human-oriented agriculture. It's either peak farmland or zero rainforest: our choice. And it is not just biodiversity on the line. When a team of scientists led by Johan Rockstrom in 2009 proposed a set of 'planetary boundaries' for avoiding damaging interference in the operations of the Earth system, they noted that majority of these proposed boundaries were significantly affected by farming: biodiversity, climate, nitrogen, water use, and so on. Making farming sustainable is therefore critical for planetary health in a wider sense than just climate or wildlife. Unfortunately, ideology—most clearly in the religion of organic and the cult of the 'natural'—serves mainly to obscure what needs to be done to achieve peak farmland. Organic farming has some direct soil and ecological benefits, but these are far outweighed by the fact that yields are significantly lower than in conventional systems: more farmland must therefore be brought into cultivation to produce the same overall harvest of food. There is a robust scientific consensus about this finding, which is supported by numerous meta-reviews. One recent innovation might have served to make organic agriculture viable—the harnessing of the power of biology, via crop genetics, as a disruptive technology to replace external inputs from agrochemicals. However, organic believers at an early stage decided that genetic engineering was an 'unnatural' technological innovation and therefore should be ruled out a priori. Ever since, various organic enthusiasts have tried to stop any cultivation of genetically modified crops elsewhere on the supposed basis that these crops might 'contaminate' their supposedly pure and natural (but lower-yielding) harvest. Genetic engineering can be thought of as biological precision agriculture. A single DNA sequence can be added to the genome of a crop to confer resistance to insect pests or fungal infections. This means, all other things remaining equal, that the insecticides or fungicides that would otherwise have been sprayed to protect the crop are no longer necessary. Drought tolerance as a trait can reduce the need for irrigation, while nitrogen efficiency can reduce fertilizer inputs. It was an epochal mistake for the organic movement to reject this technology. In a rational world, GMOs and organic would have made perfect bedfellows. In a 2010 paper in the journal PNAS, Jennifer Burney and colleagues calculated the greenhouse gas savings achieved by modern farming by comparing emissions with a counterfactual low-yield scenario that held technology constant at 1961 levels. They concluded that "the net effect of higher yields has avoided emissions of up to 161 gigatons of carbon since 1961". This is an enormous saving, equivalent to a third of the entire stock of human carbon emissions put into the atmosphere since the industrial revolution. And the land savings were equally stunning, equivalent to 1.7 billion hectares of cropland, an area twice the size of the contiguous United States. Genetic modification in its 'GMO' sense has only contributed a small latter portion to this improving picture—most of the gains were achieved through the earlier Green Revolution and the steady yield additions achieved thereafter. The challenge now is to build on this to both shrink the yield gaps that still bedevil developing countries, keeping them trapped in rural poverty, and to make conventional farming more sustainable in terms of soil conservation, reducing inputs and direct emissions and so on. This means dropping the romantic fantasies so beloved of urban foodies. Instead, in the words of Mark Watney in the movie The Martian, we need to "science the shit out of this".

### Sustainable

#### High industrial yields are sustainable---precision ag and new innovation solve the drawbacks to industrial ag

Lusk 16 – PhD, professor of agricultural economics at Oklahoma State University (Jayson, “Why Industrial Farms Are Good for the Environment,” *NYT*, Factiva)

There is much to like about small, local farms and their influence on what we eat. But if we are to sustainably deal with problems presented by population growth and climate change, we need to look to the farmers who grow a majority of the country’s food and fiber. Large farmers — who are responsible for 80 percent of the food sales in the United States, though they make up fewer than 8 percent of all farms, according to 2012 data from the Department of Agriculture — are among the most progressive, technologically savvy growers on the planet. Their technology has helped make them far gentler on the environment than at any time in history. And a new wave of innovation makes them more sustainable still. A vast majority of the farms are family-owned. Very few, about 3 percent, are run by nonfamily corporations. Large farm owners (about 159,000) number fewer than the residents of a medium-size city like Springfield, Mo. Their wares, from milk, lettuce and beef to soy, are unlikely to be highlighted on the menus of farm-to-table restaurants, but they fill the shelves at your local grocery store. There are legitimate fears about soil erosion, manure lagoons, animal welfare and nitrogen runoff at large farms — but it’s not just environmental groups that worry. Farmers are also concerned about fertilizer use and soil runoff. Continue reading the main story That’s one reason they’re turning to high-tech solutions like precision agriculture. Using location-specific information about soil nutrients, moisture and productivity of the previous year, new tools, known as “variable rate applicators,” can put fertilizer only on those areas of the field that need it (which may reduce nitrogen runoff into waterways). GPS signals drive many of today’s tractors, and new planters are allowing farmers to distribute seed varieties to diverse spots of a field to produce more food from each unit of land. They also modulate the amount and type of seed on each part of a field — in some places, leaving none at all. Many food shoppers have difficulty comprehending the scale and complexity facing modern farmers, especially those who compete in a global marketplace. For example, the median lettuce field is managed by a farmer who has 1,373 football fields of that plant to oversee. For tomatoes, the figure is 620 football fields; for wheat, 688 football fields; for corn, 453 football fields. How are farmers able to manage growing crops on this daunting scale? Decades ago, they dreamed about tools to make their jobs easier, more efficient and better for the land: soil sensors to measure water content, drones, satellite images, alternative management techniques like low- and no-till farming, efficient irrigation and mechanical harvesters. Today, that technology is a regular part of operations at large farms. Farmers watch the evolution of crop prices and track thunderstorms on their smartphones. They use livestock waste to create electricity using anaerobic digesters, which convert manure to methane. Drones monitor crop yields, insect infestations and the location and health of cattle. Innovators are moving high-value crops indoors to better control water use and pests. Before “factory farming” became a pejorative, agricultural scholars of the mid-20th century were calling for farmers to do just that — become more factorylike and businesslike. From that time, farm sizes have risen significantly. It is precisely this large size that is often criticized today in the belief that large farms put profit ahead of soil and animal health. But increased size has advantages, especially better opportunities to invest in new technologies and to benefit from economies of scale. Buying a $400,000 combine that gives farmers detailed information on the variations in crop yield in different parts of the field would never pay on just five acres of land; at 5,000 acres, it is a different story. These technologies reduce the use of water and fertilizer and harm to the environment. Modern seed varieties, some of which were brought about by biotechnology, have allowed farmers to convert to low- and no-till cropping systems, and can encourage the adoption of nitrogen-fixing cover crops such as clover or alfalfa to promote soil health. Herbicide-resistant crops let farmers control weeds without plowing, and the same technology allows growers to kill off cover crops if they interfere with the planting of cash crops. The herbicide-resistant crops have some downsides: They can lead to farmers’ using more herbicide (though the type of herbicide is important, and the new crops have often led to the use of safer, less toxic ones). But in most cases, it’s a trade-off worth making, because they enable no-till farming methods, which help prevent soil erosion. These practices are one reason soil erosion has declined more than 40 percent since the 1980s. Improvements in agricultural technologies and production practices have significantly lowered the use of energy and water, and gr eenhouse-gas emissions of food production per unit of output over time. United States crop production now is twice what it was in 1970. That would not be a good change if more land, water, pesticides and labor were being used. But that is not what happened: Agriculture is using nearly half the labor and 16 percent less land than it did in 1970. Instead, farmers increased production through innovation. Wheat breeders, for example, using traditional techniques assisted by the latest genetic tools and information, have created varieties that resist disease without numerous applications of insecticides and fungicides. Nearly all corn and soybean farmers practice crop rotation, giving soil a chance to recover. Research is moving beyond simple measures of nitrogen and phosphorus content to look at the microbes in the soil. New industrywide initiatives are focused on quantifying and measuring soil health. The goal is to provide measurements of factors affecting the long-term value of the soil and to identify which practices — organic, conventional or otherwise — will ensure that farmers can responsibly produce plenty of food for our grandchildren.

#### Alt causes to sustainable agriculture.

Carlisle et. al ’19 [Liz, Maywa Montenegro de Wit, Marcia S. DeLonge et. al; 2019; Lecturer in the School of Earth, Energy, and Environmental Sciences at Stanford University; University of California-Davis; Union of Concerned Scientists; Elementa Science of the Anthropocene, “Securing the future of US agriculture: The case for investing in new entry sustainable farmers,” vol. 7; KP]

Sustainable agriculture is central to the future, in the US and beyond. Building sustainable food systems across the country can help buffer against climate change and other environmental disruptions, renew declining rural and urban areas, and provide employment. Often motivated by a desire to help steward land and cultural heritage, a siz- able number of people would like to become sustainable farmers. But as we have shown, new sustainable farmers face a harsh, unwelcoming reality due to persistent barriers to entry. New farmers struggle to build enough assets to thrive in a world where tremendous pressures exist for farms to grow much bigger in size, reduce production costs, and specialize in a very few crops or animals. Such challenges are compounded by historical legacies of racial and gender discrimination and dispossession of Native American lands, making it even harder for farmers of color to gain the access to assets they need.

Understanding the barriers to entry and the deep socio- economic inequalities that divide farmers is an important step toward formulating policy interventions to support new sustainable farmers. Many promising policies and civil society initiatives have blossomed across the country, sign- aling greater awareness of the need to better support new farmers. Nonetheless, these developments are frequently fragmented, under-resourced, and subject to local and state neglect, despite steadily growing support. The next step should be to work toward what we have described as a “wraparound” approach that aims to envelop new sus- tainable farmers in a web of many mutually reinforcing supports that allow them to become securely established. To deliver these supports, polycentric networks of govern- ment, civil society, and industry actors will need to be nur- tured via innovative policymaking that sets the rules and provides many of the resources. Even if a Green New Deal legislative plan does not materialize, much can be done at all levels of government and society to work toward the aspirational ideas we have proposed, while also strength- ening the existing new entry farmer policy framework. One day, new sustainable farmers may become agrarian elders, passing their wisdom on to the next generation.

#### Adaptation solves.

Hance ’18 [Jeremey; January 26; wildlife blogger and journalist focusing on forests, indigenous people and climate change. He is the author of Life is Good: Conservation in an Age of Mass Extinction; *The Guardian,* “Could Biodiversity Destruction Lead to a Global Tipping Point? <https://www.theguardian.com/environment/radical-conservation/2018/jan/16/biodiversity-extinction-tipping-point-planetary-boundary>] KS

Just over 250 million years ago, the planet suffered what may be described as its greatest holocaust: ninety-six percent of marine genera (plural of genus) and seventy percent of land vertebrate vanished for good. Even insects suffered a mass extinction – the only time before or since. Entire classes of animals – like trilobites – went out like a match in the wind.

But what’s arguably most fascinating about this event – known as the Permian-Triassic extinction or more poetically, the Great Dying – is the fact that anything survived at all. Life, it seems, is so ridiculously adaptable that not only did thousands of species make it through whatever killed off nearly everything (no one knows for certain though theories abound) but, somehow, after millions of years life even recovered and went on to write new tales.

Even as the Permian-Triassic extinction event shows the fragility of life, it also proves its resilience in the long-term. The lessons of such mass extinctions – five to date and arguably a sixth happening as I write – inform science today. Given that extinction levels are currently 1,000 (some even say 10,000) times the background rate, researchers have long worried about our current destruction of biodiversity – and what that may mean for our future Earth and ourselves.

In 2009, a group of researchers identified nine global boundaries for the planet that if passed could theoretically push the Earth into an uninhabitable state for our species. These global boundaries include climate change, freshwater use, ocean acidification and, yes, biodiversity loss (among others). The group has since updated the terminology surrounding biodiversity, now calling it “biosphere integrity,” but that hasn’t spared it from critique.

A paper last year in Trends in Ecology & Evolution scathingly attacked the idea of any global biodiversity boundary.

“It makes no sense that there exists a tipping point of biodiversity loss beyond which the Earth will collapse,” said co-author and ecologist, José Montoya, with Paul Sabatier Univeristy in France. “There is no rationale for this.”

Montoya wrote the paper along with Ian Donohue, an ecologist at Trinity College in Ireland and Stuart Pimm, one of the world’s leading experts on extinctions, with Duke University in the US.

Montoya, Donohue and Pimm argue that there isn’t evidence of a point at which loss of species leads to ecosystem collapse, globally or even locally. If the planet didn’t collapse after the Permian-Triassic extinction event, it won’t collapse now – though our descendants may well curse us for the damage we’ve done.

Instead, according to the researchers, every loss of species counts. But the damage is gradual and incremental, not a sudden plunge. Ecosystems, according to them, slowly degrade but never fail outright.

“Of more than 600 experiments of biodiversity effects on various functions, none showed a collapse,” Montoya said. “In general, the loss of species has a detrimental effect on ecosystem functions...We progressively lose pollination services, water quality, plant biomass, and many other important functions as we lose species. But we never observe a critical level of biodiversity over which functions collapse.”

### 1NC – AT: Phosphorus Impact

#### Phosphorous consumption is sustainable and we won’t run out anytime soon

Tina-Simone **Neset 16**, Assistant Professor linkoping University, “Visualizing Alternative Phosphorus Scenarios for Future Food Security” 10/28 http://pubmedcentralcanada.ca/pmcc/articles/PMC5083849/

A number of global phosphorus scenarios were presented by Van Vuuren et al. (18) and supported the expected increase of phosphorus consumption over the coming decades, for selected world scenarios. This increasing demand was followed by potential stabilization due to expected advances in feed additives, agricultural, and technological advances. The selected scenarios represented the Millennium Ecosystem Assessment scenarios and therefore provided four different alternative futures. While the fixed assumptions for alternative future scenarios are valuable for simplifying the analysis, they limit the exploration of other possible pathways or abrupt changes in pathways. Other phosphorus scenario studies covered future phosphorus scenarios for the European Union (11) or for specific parts of the food system (46, 47). Some of the limitations of previous scenario studies, which often have a strong focus on specific supply trajectories, might be overcome by the interactive feature of the global scenario tool. This tool enables users to create their own scenario – independent of predefined storylines – and facilitates dialogs and unlimited model exploration. The rather generic nature of the interactive global phosphorus scenario tool entails certain limitations as well, in that it does not allow the specific exploration of detailed system information for specific regions or parts of the food system. For example, in countries like Japan and China, byproducts from the steel industry are a huge potential source of phosphorus (12).

### 1NC – AT: Endocrine Disruption Impact

#### No proof of impact there’s no way to trace endocrine disruptors to birth rates

Fitzgerald 20, Rex Fitzgerald, Swiss Centre for Applied Human Toxicology, “Perspective on Health Effects of Endocrine Disruptors with a Focus on Data Gaps,” 2020, <https://pubs.acs.org/doi/abs/10.1021/acs.chemrestox.9b00529?casa_token=VMydFGFnY5sAAAAA%3A33Irk1oe00GtZBC8I6ciSjbm4rvXLTq8Et2GdQy6K6Iwl-hHnne0hDPDED81tZD6XeHPowjlKFNRQw&> //cc \*EDCs = Endocrine Disrupting Chemicals\*

It has been stated that “data is the oil of the 21st century” (https://economictimes.indiatimes.com/magazines/panache/ data-is-the-21st-centurys-oil-says-siemens-ceo-joe-kaeser/ articleshow/64298125.cms), but we still need to learn how to refine and use data. Human health data are essential to establish the relevance of molecular and cellular toxicity data for EDCs. As illustrated in this perspective, we are not there yet; a substantial amount of work needs to be done. A fundamental requirement for high quality long-term disease data is data linkage, using unique identification of all persons in the population. This has been achieved in some countries, e.g. Denmark. Changes in diagnostic criteria will continue to be an issue. Data sharing and transnational analysis will undoubtedly be facilitated by uptake of the FAIR principles, but legislative barriers may take longer to address. Patient consent for secondary data use is essential and will likely depend on communication of the perceived benefits. A European Commission report entitled “Study on Big Data in Public Health, Telemedicine and Healthcare” (https://ec. europa.eu/digital-single-market/en/news/study-big-datapublic-health-telemedicine-and-healthcare) recommended as a first step “a communication strategy to encourage a positive public mind set toward Big Data in Health”. For all the above reasons, it is clear why generating reliable long-term data for human diseases putatively associated with EDCs has not yet been achieved and thus why it is difficult to bridge the gap between molecular/cellular/animal toxicity data and human health risks of EDCs. This will require international cooperation, sustained support, and public acceptance.

### 1NC – AT: Dead Zones Impact

#### Ecosystems are resilient to dead zones

Altieri 21, Andrew Altieri, Maggie Johnson, Sara Swaminthan, Hannah Nelson, Keryn Gedan, Department of Environmental Engineering Sciences @ Univesity of Florida, Biology Department @ Woods Hole Oceanographic Institution, Department of Environmental Engineering Sciences @ University of Florida, Center for Population Biology @ University of California, Department of Biological Sciences @ George Washington University, “Resilience of Tropical Ecosystems to Ocean Deoxygenation,” March 2021, [https://www.sciencedirect.com/science/article/pii/S0169534720303360?via%3Dihub#](https://www.sciencedirect.com/science/article/pii/S0169534720303360?via%3Dihub)! //cc

Corals, mangroves, and seagrasses all possess physiological and structural mechanisms that mediate their oxygen environment and can counteract hypoxia (Figure 1). Mangroves have conspicuous prop roots and pneumatophores that supply atmospheric oxygen to their belowground roots and rhizosphere [23]. Similarly, seagrasses transport oxygen from their blades down to the rhizosphere, creating favorable biogeochemical conditions for nutrient exchange and root health, and release excess photosynthetic oxygen into the canopy [24,25]. Corals capitalize on oxygen produced by their endosymbiotic algae to maintain elevated oxygen concentrations in their tissues and the surrounding water [26]. The photosynthetic production of oxygen by these tropical foundation species, combined with mechanisms that can continue at night, including their ability to utilize oxygen stored in their tissues [27], create oxygenated microhabitats [25,26], absorb atmospheric oxygen [23], and/or redistribute oxygen internally counter to external oxygen gradients [24,28], provide the potential for ‘self-rescue’ not seen in the bivalve reefs or infauna-dominated soft sediments that have been the focus of temperate hypoxia research. The hypoxia tolerances of marine organisms associated with tropical foundation species are not well established [7], but evidence points towards widespread adaptation to hypoxia across taxonomic groups and habitat types. For example, fish from numerous families exhibit high tolerances to hypoxia in both coral reef [29] and mangrove [30] habitats, whereas other fish overcome low concentrations of dissolved oxygen through surface air gulping [31] or by crawling out of water to breathe air [32]. Ctenophores and cnidarians thrive in hypoxic mangrove ponds just as they do in seasonally hypoxic temperate estuaries [15] and lucinid clams reach their highest abundances in the sulfide-rich hypoxic sediments of seagrass beds [33]. Other species exhibit phenotypic plasticity in response to hypoxia, such as reef-dwelling fireworms that can increase the surface area of their respiratory structures [34]. Despite the handful of studies documenting hypoxia tolerance in tropical species, basic research is needed to elucidate mechanisms of tolerance, the physiological basis for interspecific variation, and the scope for acclimation to near-term deoxygenation trends. For example, recent research in mangrove forests has documented distinct fish and benthic communities in forest interiors where oxygen concentrations are limiting, suggesting that community structure may be influenced by hypoxia [35,36]. The tropics are hyperdiverse and have long been recognized for the ubiquity of mutualisms [37]. This extends to relationships where oxygen serves as a ‘universal currency’ exchanged between partners to facilitate their persistence in oxygen-limiting environments [8]. For example, photosynthetic endosymbionts (Symbiodinium spp.) produce oxygen that is consumed by their coral hosts [38]. Corals also form facultative mutualisms with ‘sleep-swimming’ fish that mitigate nighttime oxygen depletion by ventilating their sleeping crevice with fin movement [39]. Seagrasses can tolerate stressful conditions with the aid of lucinid clams. Seagrasses oxygenate the rhizosphere in exchange for metabolism of toxic sulfides by lucinids, a relationship that is particularly important in the warmer tropics [33]. Mangroves likewise provide oxygen to infauna in sediments around pneumatophores, which is important for microbial biogeochemical cycling [40], and crab burrowing alleviates hypoxic stress in mangrove sediments by enhancing aeration and tidal flushing [41]. These mutualistic interactions are as important for tolerance of deoxygenation at the community level as the physiological mechanisms are at the organismal level. Future research is likely to reveal other mutualisms, particularly between photosynthetic and non-photosynthetic organisms, and relationships involving organisms that oxygenate microhabitats by burrowing or pumping water. Adaptations, including metabolic and behavioral traits, mutualisms, and mechanisms of self-rescue, offer protection against deoxygenation. Although hypoxic conditions have been commonly measured in mangrove forests and seagrass beds, there have been no mass mortality events attributed solely to naturally occurring hypoxia. Perhaps surprisingly, corals are proving remarkably tolerant to low oxygen, with common Caribbean reef species capable of tolerating near-anoxia for over 1 week (M.D. Johnson, unpublished). Even in extreme hypoxic events associated with mass mortality of some coral species (e.g., Agaricia lamarcki), other species persisted (e.g., Stephanocoena intercepta) [5], resulting in community assemblage shifts rather than complete loss of corals from the ecosystem. Determining the extent to which these adaptations will translate to tolerance to anthropogenic deoxygenation should be a research priority.

## Acceleration

#### No internal link between the aff and democracy

#### Alt causes to democracy – consolidation in big tech, banking thump

#### Global backsliding is an alt cause or its resilient

Anna Lührmann et al**,** 6-26-2017, (Anna Lührmann is a postdoctoral research fellow at the V-Dem Institute at the University of Gothenburg. From 2002 to 2009, she was a member of the German National Parliament. Valeriya Mechkova is a PhD candidate at the V-Dem Institute/University of Gothenburg. Matthew Wilson is an assistant professor at West Virginia University and will be a visiting researcher at the V-Dem Institute in 2018."Analysis," Washington Post, https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/26/is-democracy-on-the-decline-not-as-much-as-some-pundits-want-you-to-believe//)

Clearly liberal democracy is facing challenges in some countries — in particular in the United States. Therefore, U.S. political scientists are right to be on alert and continuously monitor the weak points of their democracy. In some places, it is even worse: Countries such as Turkey or Venezuela have experienced serious breakdowns. But the V-Dem data suggests that alarmist reports about a global demise of democracy are not yet warranted. For one, the average level of democracy in the world is still close to the highest recorded level, even if a slight decline is detectable over the last few years. And there are real success stories, like in Tunisia, even if those do not make as many headlines. Although the declines in democracy in places such as Europe and the United States deserve our attention, the V-Dem data suggest that political institutions in these countries are relatively resilient. Recent examples include the electoral victory of Emmanuel Macron against Marine Le Pen in France and judicial challenges to the immigration ban proposed by President Trump.

#### farm AMR bacteria scenario is silly - first part of the card is bacteria becoming resistant because hospitals overuse this stuff - second part of the card is just antibiotics hurt the environment

#### No causal relationship between democracy and peace---best studies.

Michael Mousseau 18. Professor of International Relations Theory at the University of Central Florida. 2018, "Grasping the scientific evidence: The contractualist peace supersedes the democratic peace," SAGE Journals, https://journals-sagepub-com.libproxy2.usc.edu/doi/abs/10.1177/0738894215616408, accessed 3-4-2019//JDi

No one has challenged the multiple reports that contractualist economy is the strongest nontrivial predictor of peace both within (Mousseau, 2012b) and between nations (Mousseau, 2013; see also Nieman, 2015). The only matter in controversy is whether democracy has any impact on peace after consideration of contractualist economy. I investigated all five reasons offered in the literature (excluding already-refuted arguments) to think democracy causes peace, and found no support for any of them. The correlation of democracy with peace is zero regardless of how contractualist economy or interstate conflict is measured; the disaggregation of the data yields no support for a causal interaction of democracy with contractualist economy, and the state of knowledge offers no evidence of causation from democracy to contractualist economy and peace. While some correlation of democracy with peace appears in analyses of all disputes (at the 0.10 level), this appears to be a statistical artifact, since democracy is near zero in analyses of wars, fatal-only disputes (Mousseau, 2009, 2012a, 2013 and above), and militarized crises (Mousseau et al., 2013a, b). Analyses of all-disputes are less accurate than those of fatal disputes and crises because they are more likely to include events that are not state-to-state confrontations, and more likely to under-report events occurring in clientelist dyads. We saw that clientelist democracies tend to be geographically dispersed, and this may account for the non-fatal peace, which does not exist in bordering dyads where everyone has an equal chance to fight. The non-fatal correlation of democracy with peace is also marginal, as we saw in Table 4 that it includes only 27% of dyads and only 50% of joint-democratic dyads. This study largely investigated unsupported assertions of fact and showed them to lack support: neither DOR nor Ray (2013) properly supported their claims that multiple imputation, the treatment of ongoing dispute years, an interaction, the adoption of an alternative measure for contractualist economy, or reverse causality actually restore the evidence for the democratic peace. In this way this study merely corroborated what was already the state of knowledge, and it would be a mistake to think there are continuing factual differences in this controversy. I cannot promise that the analyses herein are error free, and I fully expect defenders of the democratic peace to carefully scrutinize them for errors, but no claim of error should be perceived as resurrecting the correlation of democracy with peace unless it is also shown to change results. Nor has anyone disputed the overturning of the democratic peace as reported in two studies (Mousseau, 2009, 2012a). While DOR (205) assert that the analyses in Mousseau (2009) are based on a misinterpreted interaction term, there is no such interaction term in Mousseau (2009). The only evidence-based defense of the democratic peace that exists today comes from DOR’s 120 regressions, 101 of which are invalid. Of the 19 valid ones, only 15 are of fatal disputes that count, and every one of these 15 regressions is mired by one of two questionable practices: five include control for the DemocracyH term that is said to artificially inflate the democracy coefficient; 10 are irrelevant because they include the inconsequential interaction term additionally calculated at the misleading 75th percentile of contractualist economy. If there is a correlation of democracy with peace, why cannot this be shown in a clear-cut regression? Beyond the facts, scientific assessment calls for acknowledgment of the imbalance of theory in this controversy. Economic norms theory does not deny the correlation of democracy with peace, and thus all prior evidence for it; rather, it offers a specific and falsifiable explanation for the correlation that identifies it as spurious. Defenders of the democratic peace are not putting forth a competing explanation for the correlation; rather, they simply oppose the idea that democracy does not independently cause peace, with no reason given for this opposition. However, democracy is not a random variable, so there are no scientific grounds that prohibit us from seeking to explain it, and there are no scientific grounds that preclude that whatever explains democracy cannot also explain the peace. Causality, not statistics, lies at the core of this controversy, and causality cannot be directly seen: it can only be theorized and corroborated. Yet defenders of the democratic peace have not addressed any of the extensive corroborations of economic norms theory accrued in studies of civil conflict and insurgency (Mousseau, 2012b), terrorism (Meierrieks 2012; Boehmer and Daube, 2013; Krieger and Meierrieks, 2015), democratization (Aytacx et al., 2016), and human rights (Mousseau and Mousseau, 2008). The weight of evidence for economic norms theory overwhelms any theory of democracy causing peace (Ungerer, 2012), yet defenders of the proposition have sought only to report some statistically significant correlation of democracy with peace, as if correlation equals causation (Dafoe, 2011; Dafoe and Russett, 2013; DOR; Ray, 2013; Russett, 2010). Nor is there any scientific basis for concluding that this controversy is ultimately unresolvable because the factors are closely related, as is frequently asserted without support (e.g. DOR: 203). The relevant factors are not closely related: contractualist economy is only moderately correlated with trade interdependence (0.31), income (0.71/0.56), and democracy (0.47) (Mousseau, 2013: 191–193). That contractualist nations are almost always democratic does not mean that democratic nations are almost always contractualist, and the majority 57% of democracies had clientelist economies from 1950 to 2010. The notion that democracy, market development, and trade are synonymous is rooted in ignorance, and ignorance cannot justify discarding, after the fact, our carefully constructed measures and datasets.13 The implications of this study are far from trivial: the democratic peace, defined as democracy causing peace, lacks the evidentiary core on which it is based; the observation of democratic peace is best explained by contract norms. If our field is to abide by scientific rules of evidence, then our scholars must stop describing democracy as a ‘‘known’’ cause, or correlate, of peace, and we must stop tossing in a variable for democracy, willy-nilly, in quantitative analyses of international conflict. The variable to replace it is contractualist economy, which not only subsumes democracy but is now the most powerful non-trivial factor in the study of international conflict, whose impact is more than 10 times that which we once thought democracy had. No historical study is immune to criticism, but the progress of knowledge will not be furthered with another (third) round of ardently asserted claims of error that are not shown to change results. I understand the prior view of democratic peace is known and intuitive and the contractualist peace is less so, and unsupported assertions are enough for many to believe in already-known claims. However, the purpose of science is to promote rather than stifle innovation, and to differentiate good ideas from bad ones. Better yet are new ideas that can help make the world a better place, and economic norms theory is clear on that: if the wealthy market-oriented nations wish to advance democracy and peace around the world, the way to do that is to promote economic opportunity.

#### No impact to nitrogen to the cycle, at best the defense to bio d applies

#### Impact to geoengineering is about climate but their internal is about things like domestication of crops – starts at 0 risk

#### Warming doesn’t cause extinction---new studies.

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

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

# 2NC

## States

#### Federal government is the national government as distinct from state governments

**WEBSTER'S 76** NEW INTERNATIONAL DICTIONARY UNABRIDGED**,** p. 833.

Federal government. Of or relating to the central government of a nation, having the character of a federation as distinguished from the governments of the constituent unites (as states or provinces).

#### Congress won’t supersede, the Court would block it, and states are undeterred by the Fed.

De la Cruz ’19 [Peter; June 26; Senior Counsel, J.D. from the University of Toledo; The National Law Review, “States Flex Their Muscles and Antitrust Skills to Block Sprint/T-Mobile Merger,” <https://www.natlawreview.com/article/states-flex-their-muscles-and-antitrust-skills-to-block-sprintt-mobile-merger>]

A highly respected antitrust professor wrote: “When Congress enacted the federal antitrust laws it chose not to foreclose state antimerger activity. The legislative histories of the antitrust laws indicate that the congressional purpose was to supplement, not supplant, state activity. This intention has repeatedly been affirmed by the Supreme Court. Critics fear negative effects from ascendant state merger scrutiny. Many believe that the government’s position towards exceptionally large transactions should be a fundamental matter of national economic policy. Enforcement and nonenforcement decisions, they say, should be made by officials appointed by the President with the approval of the U.S. Senate. Such critics fear that the prospect of challenge by any of fifty states adds uncertainty and delay into an already problematic process, and will cause beneficial transactions never to be attempted.” The year was 1989.1

Since the enactment of the Hart-Scott-Rodino Act in 1976, we have grown accustomed to premerger notification at the federal level for all larger mergers and acquisitions. For the most part, State Attorneys General have participated via comments or supplemental filings in large transactions subject to premerger review. A generation of antitrust lawyers have lived in this environment. Indeed, some years ago lawyers were surprised that the federal government could challenge mergers after the fact given the long lapse in the governments exercise of that power, but that power was never removed, and private merger enforcement action also remains possible.

Can the states seek to block the merger? Yes. Will FCC and US Department of Justice approval stop the state litigation? No. What’s the biggest obstacle facing the state challenge? Limited state funding. Antitrust litigation is often protracted and costly. T-Mobile and Sprint, with their largest stockholders — Deutsche Telekom AG and SoftBank Group Corp., respectively — will certainly dedicate resources to defeat the states via litigation siege. These pressures, coupled with Justice Department clearance, may push the states to settle, although the terms of a successful settlement for the states is unclear. Meanwhile, T-Mobile and Sprint may be delayed in completing the transaction, which is a costly complication without a certain outcome.

The Redacted Complaint filed by nine states and the District of Columbia, and later joined by an additional four states, presents a solid facial argument against the merger. There are only four companies with networks that serve at least 90% of the U.S. population. Verizon and AT&T are the largest. “T-Mobile and Sprint are the third and fourth largest [mobile network operators] MNOs in the United States and serve approximately 80 million and 55 million customers, respectively.”2

The states allege that T-Mobile’s controlling shareholder, Deutsche Telekom AG, believes that it could earn a greater return on its investment by reducing competition.3 The states argue that:

“The proposed transaction would eliminate Sprint as a competitor and reduce the number of [mobile network operators] MNOs with nationwide networks in the United States from four to three. The combined company would have a retail market share larger than the two largest MNOs today, Verizon and AT&T. In some areas, including in the New York City metropolitan area, the combined company’s share of subscribers would exceed 50%. The combined market share of Sprint and T-Mobile would result in an increase in market concentration that significantly exceeds the thresholds at which mergers are presumed to violate the antitrust laws. This increased market concentration will result in diminished competition, higher prices, and reduced quality and innovation.”4

Although the data table is redacted, the Complaint claims that the nation’s top 50 cellular market areas (CMAs) encompass about 50% of the U.S. population, and competition would be substantially lessened in each of the top 50 CMAs. The complaint argues many, particularly those with lower incomes who cannot pass a credit check and must purchase mobile wireless telecommunications service on a prepaid basis, rely on mobile wireless telecommunications services as their primary form of communications and do not have traditional wireline phone or broadband connections. If the merger is permitted, the “merger will negatively impact all retail mobile wireless telecommunications service subscribers but will be particularly harmful to prepaid subscribers”5

The states rely upon these claims to allege that “the transaction likely would substantially lessen competition in these local markets,” creating an actionable harm to the state’s citizens that justify the states’ standing to challenge the merger.

The complaint contains other supporting arguments and detail. The merger “would cost Sprint and T-Mobile subscribers more than $4.5 billion annually.”6 Other countries that have allowed consolidation from four to three competitors recorded an average price increase “between 17.2% and 20.5%.7There are significant barriers to entry that will be faced by any new provider, so potential competition will not be a factor. Finally, the states argue that the proposed commitments made to the FCC are insufficient to protect competition.8

The states have set a solid foundation from which to proceed. There is no obvious precedent that will permit T-Mobile and Sprint to end the case quickly, but protracted litigation will test the resolve and resources of all the parties.

#### State authority exceeds federal antitrust---Supreme Court has rejected challenges AND no legislation preempts.

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

Civil enforcement of state antitrust laws

Most states have enacted state antitrust laws that are comparable to Sections 1 and 2 of the Sherman Act.[[52]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-076) In addition, some states have passed antitrust laws that are similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act.[[53]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-075) These state antitrust laws typically contain provisions expressly requiring that ‘they be construed in conformity with comparable [f]ederal antitrust statutes’.[[54]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-074) Some states may have statutes that go beyond the scope of the federal antitrust statutes. For example, California recently passed a statute that would deem certain ‘reverse-payment settlements’ to be presumptively anticompetitive.[[55]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-073)

State antitrust statutes typically provide state attorneys general with broad authority to investigate possible violations, including the power to ‘issue civil investigative demands compelling oral testimony, the production of documents, and responses to written interrogatories to individuals and corporations’.[[56]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-072) Like the federal antitrust laws, most state antitrust laws authorise state attorneys general to file civil lawsuits on behalf of their states and state governmental entities whenever a violation has caused them to suffer harm in their capacity as direct purchasers of goods or services, as well as parens patriae actions on behalf of their citizens.[[57]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-071)

In bringing enforcement actions under state antitrust laws, state antitrust enforcers typically have the authority to seek a broad range of relief, including treble damages, disgorgement of unlawful profits, injunctions, and attorney’s fees and costs.[[58]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-070) In some states, antitrust enforcers can also seek to have a contract declared void; suspend a violator’s ability to be awarded state contracts for a certain period; rescind an out-of-state company’s ability to do business within the state; and terminate an in-state company’s corporate charter.[[59]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-069)

Moreover, state attorneys general can often seek relief on behalf of indirect purchasers when exercising their state law parens patriae authority. This is an important distinction between the parens patriae authority that state attorneys general enjoy under federal and state antitrust laws

. The United States Supreme Court’s decision in Illinois Brick Co. v. Illinois precludes state attorneys general from seeking damages on behalf of indirect purchasers in parens patriae actions brought under the federal antitrust laws.[[60]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-068) In direct response to this decision, nearly 25 states and the District of Columbia have passed ‘Illinois Brick repealer’ laws that expressly authorise state attorneys general to recover damages on behalf of indirect purchasers that were harmed by state law antitrust violations.[[61]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-067) Notably, the United States Supreme Court has rejected constitutional challenges to these laws on the bases that states are free to permit indirect purchasers to recover damages given that (1) Congress has not passed legislation that preempts such state laws and (2) allowing indirect purchaser recovery under state law does not frustrate the legislative purpose of the federal antitrust laws.[[62]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-066) The states that have passed Illinois Brick repealer laws include California, New York and Illinois.[[63]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-065)

#### States can challenge agricultural monopolies and survive legal challenges.

Wiley ’15 [Lindsay F.; 2015; Associate Professor of Law at American University, Washington College of Law. A.B., Harvard University, J.D., Harvard Law School; American Journal of Law & Medicine, “Deregulation, Distrust, and Democracy: State and Local Action to Ensure Equitable Access to Healthy, Sustainably Produced Food,” vol. 41 p. 284-314; kp]

Our food system is hotly contested territory. In the midst of widespread concern about obesity-related disease and toxic exposures, manufacturers have flooded the market with products touted as “natural,” “organic,” and “GMO-free,” including many that are high in sugar, salt, and fat. Consumers are demanding more information about the food and beverage products they buy and the ways in which they are produced.13 At a time when federal regulation to protect the public’s health, consumers, and the environment has been stymied by legislative inaction and constraints on agency rulemaking, state and local governments have taken on a high-profile role in “regulating to the detriment of politically powerful industries and their allies for the purpose of conferring diffuse benefits on the public.”14 City, county, and state governments have become crucial innovators, particularly in areas such as tobacco control, obesity prevention, Genetically Modified Organisms (GMOs), and pesticide use. Industry groups are responding with increasingly sophisticated litigation and legislation strategies, using the First Amendment, Due Process, Equal Protection, federalism, and separation of powers constraints to challenge and preempt food system regulations. In this Part, I introduce four recent cases that illustrate the complexity of these issues.

A. VERMONT’S GMO DISCLOSURE MANDATE AND ADVERTISING RESTRICTIONS: GROCERY MANUFACTURERS ASSOCIAITION V. SORRELL

A little more than forty years after the discovery of recombinant DNA15 and twenty years after the U.S. Food and Drug Association (FDA) first approved an additive used to produce GM foods,16 GM crops and foods are now ubiquitous. About 70-80% of foods purchased for home consumption and sold in restaurants contain at least one GM ingredient.17 About half of U.S. cropland was seeded with GM crops in 2013, including 93% of soybean acreage and 90% of corn acreage.18 In spite of, or perhaps because of, the dominant presence of GM products in our food system and repeated assurances from federal agencies that they are safe, the majority of Americans express concern about their safety and environmental impacts.19 In surveys, consumers overwhelmingly favor mandatory labeling of GM foods,20 though statewide ballot measures in California, Washington, Colorado, and Oregon have been unsuccessful.21

Proponents of genetic modification argue that GM products (ranging from bacteria that break up spilled oil to treatments for diabetes and malaria to high-beta-carotene rice that prevents nutrient deficiencies) have given scientists and policymakers new tools for feeding people, saving lives, and protecting the environment.22 Critics express concerns about health, environmental, and economic impacts. GM foods can introduce new allergens into the food system.23 GM crops may reduce growers’ use of highly toxic herbicides in the short run (by increasing the effectiveness of less toxic alternatives like glyphosate), but in the long run they may simply speed up the development of weeds’ resistance to less toxic herbicides.24 Reliance on GM crops reduces biodiversity.25 GM seeds contaminate non-GM crops,26 causing economic harm to growers who wish to certify their products as GM-free.27 The market dominance of GM seeds increases growers’ economic dependence on a small number of seed manufacturers.28

Footnote starts.

28 Robert Langreth & Matthew Herper, The Planet Versus Monsanto, FORBES (Dec. 31, 2009, 4:40 PM), http://www.forbes.com/forbes/2010/0118/americas-best-company-10-gmos-dupont-planet-versus- monsanto.html (describing the antitrust concerns surrounding Monsanto, which ~~cripples~~ [devastates] smaller seed companies due to its high market share).

Footnote ends.

More serious health concerns—ranging from birth defects, to liver failure, to a wide range of cancers—have been raised by GM critics, but are not supported by reputable scientific sources. 29

There is no federal statute specific to GMOs.30 Pursuant to the Coordinated Framework for Regulation of Biotechnology,31 which emphasizes that “regulatory oversight should focus on the characteristics and risks of the biotechnology product— not the process by which it is created,”32 federal agencies treat GM foods as equivalent to foods developed using traditional cross-breeding techniques.33 GMO producers are subject to generally applicable health, safety, and environmental statutes.34 The FDA has provided nonbinding guidance on voluntary labeling of GM foods,35 but has not imposed restrictions on genetic modification in food production.36 The U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) regulates planting and interstate transportation of GMOs that pose a plant pest risk.37 The U.S. Environmental Protection Administration (EPA) regulates GM plants that produce substances intended to control pests (called plant-incorporated protectants) for environmental safety and safety for use in food.38 The EPA also regulates GM microorganisms under the Toxic Substances Control Act.39 Additionally, agencies taking certain actions with regard to GMOs may be required to prepare Environmental Assessments or Environmental Impact Statements under the National Environmental Policy Act.40

Frustrated by the lack of more rigorous regulation of GMOs and the GM production process at the federal level, several state and local governments have stepped in.41 In May 2014, Vermont became the first state to enact a GM foods labeling mandate.42 Citing “multiple health, personal, religious, and environmental reasons,”43 Act 120 would require GM foods44 to be labeled as “produced with genetic engineering,” “partially produced with genetic engineering,” or “may be produced with genetic engineering.”45 It would also prohibit such foods from being marketed using the words “natural,” “naturally made,” “naturally grown,” “all natural” or “any words of similar import that would have a tendency to mislead a consumer.”46 Violation of either provision would be punishable by civil fines of up to $1000 per product, per day.47 Act 120 authorizes the Attorney General to adopt rules requiring that mandated labels “include a disclaimer that the Food and Drug Administration does not consider foods produced from genetic engineering to be materially different from other foods” and to harmonize Vermont’s labeling requirements with those adopted by other jurisdictions.48

In June 2014, the National Association of Manufacturers, the International Dairy Foods Association, the Snack Food Association, and the Grocery Manufacturers Association filed a complaint in federal court alleging that Act 120: (1) violates their First Amendment right “to speak freely and the right to refrain from speaking at all”;49 (2) violates the Fifth Amendment’s requirement that “state laws define prohibited conduct with sufficient specificity” so as to afford regulated entities “reasonable notice” and avoid subjecting them to “arbitrary enforcement of the laws”;50 (3) violates the Commerce Clause’s implied prohibition on state regulation of interstate commerce;51 and (4)is expressly or impliedly preempted by the Federal Food, Drug, and Cosmetic Act (FFDCA), the Nutrition Labeling and Education Act (NLEA), the Federal Meat Inspection Act, and the Poultry Products Inspection Act.52

As of this writing, the case was pending in the federal district court, with industry groups, food reform advocates, and other state and local governments watching it closely. GMO labeling legislation has been introduced in more than twenty jurisdictions, including via voter referendum.53 Commentators have suggested that labeling laws represent the best solution to the debate over the potential health risks of GM foods and have argued that state and local labeling laws should be upheld in the face of constitutional challenges.54

#### Signaling is offense. The fed can’t signal effectively---the states can.

Spiegel ’21 [Julia; March 3; Deputy County Counsel in the Santa Clara County Counsel’s Office and Lecturer in International Policy Studies and Law at Stanford University, J.D. from Yale University, M.P.A. from the Princeton School of Public and International Affairs; Lawfare, “Embracing Foreign Affairs Federalism in a Post-Trump Era,” <https://www.lawfareblog.com/embracing-foreign-affairs-federalism-post-trump-era>]

Nearly a year into the coronavirus pandemic, it is hard to be optimistic about the future of global cooperation and the institutions that are supposed to support it. Absent major power leadership, anarchic tendencies have prevailed. The human toll alone is devastating, with more than [114 million](https://www.cnn.com/interactive/2020/health/coronavirus-maps-and-cases/) people having been infected with the virus globally and many more expected to fall victim to the virus before the pandemic’s defeat.

The global community’s bungled response to the pandemic has laid bare the often-yawning gap between the crises the world faces and the responses that major powers manage to mount. With growing political gridlock and dysfunction on national and global levels—from pandemics and climate change to election interference and terrorism—it is clear that national and global bodies are struggling to meet the moment. While these are serious shortcomings, the picture is not all bleak.

In underappreciated ways, states and localities have been stepping in to fill the foreign policy void by taking a range of actions that bear directly on foreign relations. Subnational governments make these policy decisions because they do not have the luxury of waiting for national or multilateral leadership to tackle crises like pandemics or wildfires on their doorsteps. States and localities are also the government entities on the frontlines delivering essential goods and services, giving them a finer-tuned sense of constituent needs and how best to meet them. Further, subnational governments are central foreign policy implementers. They make the concrete commitments needed to actualize and add “[stickiness](http://opiniojuris.org/2018/02/20/law-and-stickiness-in-the-times-of-the-great-unglued/),” or staying power, to many of the global agreements the U.S. seeks to join.

That subnational governments are the frontline responders to many foreign affairs matters creates real advantages. Rather than merely bemoaning the shortcomings of national and global bodies (which can and should be addressed), the U.S. should embrace the role that states and localities play as force multipliers and divisors of solutions to the foreign policy dilemmas the global community faces. Such an embrace requires a better understanding of the types of foreign affairs federalism that exist today and a strategy to employ local powers to tackle global challenges in a post-Trump era.

#### It bypasses partisanship and creates a pathway for national adoption---starting with the fed locks in polarization.

Spiegel ’21 [Julia; March 3; Deputy County Counsel in the Santa Clara County Counsel’s Office and Lecturer in International Policy Studies and Law at Stanford University, J.D. from Yale University, M.P.A. from the Princeton School of Public and International Affairs; Lawfare, “Embracing Foreign Affairs Federalism in a Post-Trump Era,” <https://www.lawfareblog.com/embracing-foreign-affairs-federalism-post-trump-era>]

A True Embrace of Foreign Affairs Federalism

The Biden-Harris administration—and global bodies tasked with addressing crises around the world—should work with states and localities as the key foreign affairs agents they have already become.

Despite common perceptions of federalism as a conservative or Republican value, local foreign affairs efforts exist in red and blue jurisdictions alike. In practice, whichever party lacks control of the White House tends to be the standard bearer for federalism, including in the foreign affairs arena. But as this post has sought to demonstrate, subnational governments also engage constructively on foreign policy matters, regardless of which party controls the White House. Ultimately, decentralized foreign affairs powers, at least as used in practice, are not partisan. Further, these powers need not be favored in densely populated areas rather than more rural ones, as state governments represent both. And on a more local level, counties, which lean rural and suburban, can become a significant part of the foreign affairs federalism equation.

Embracing local foreign affairs will require resources. And adding another set of actors to already complicated multi-stakeholder negotiations is not a light lift. But even if some localities balk or others are not prepared to commit, the political risks in the early stages of negotiations are likely low, while the potential upside is significant. Locking in local commitments could bolster support for the federal government’s position—on the front end and back end of deal-making. In doing so, the U.S. could not only build more leverage when negotiating foreign affairs deals, but it also could secure the local support essential to delivering on U.S. commitments and, hopefully, pave the way for more viable support for treaty commitments in Congress.

## Agriculture

#### Intensive ag is necessary to solve warming

Swain ‘16 - Senior Analyst @ the Breakthrough Institute   
[Marian, "An Outlook on Omnivorism and the Environmental “Hoofprint” of Livestock," Dec 14, https://thebreakthrough.org/index.php/issues/the-future-of-food/the-future-of-meat]

Greenhouse Gas Emissions

The difference in productivity between extensive and intensive production systems has major climate implications. Growing animals to slaughter weight faster can dramatically reduce emissions, most notably for beef. Fully two-thirds of all greenhouse emissions from global beef production consist of methane from enteric fermentation, a natural process that occurs during digestion.39 Cows belch out enteric methane emissions throughout their lifetime, so getting cows to slaughter weight faster also reduces the amount of time they are emitting methane. Intensive systems realize these environmental gains; in the United States, for example, grain-finished cattle take a fraction of the time to reach slaughter weight compared to grass-finished cattle.40 Feedlot-finished cattle are also usually larger than pastured cattle, which means each cow’s emissions are divided by a larger amount of meat.41

Producing feeds for intensive beef production also generates greenhouse emissions, but since animals only occupy feedlots for a short period, the added emissions from feed production are dwarfed by the savings from months of avoided enteric fermentation emissions.42 Feed emissions result from general agricultural practice (fertilizer production, machinery), but can also be attributed to land-use change if the feeds are sourced from a region undergoing deforestation for agricultural conversion.

When it comes to the question of emissions reductions, the role of carbon sequestration in cattle grazing has gained increased attention in recent years. Although well-managed pasturelands can help soils sequester carbon43 an equilibrium in soil carbon is reached fairly quickly,44 and the carbon benefits are not enough to offset the overall higher emissions in grazing-based ranching systems.45 Furthermore, the benefits of good pasture management can accrue to both grass-finished and feedlot cattle, since both spend time on pasture. Ultimately, due to the difference in productivity and thus in enteric fermentation emissions, feedlot-finished cattle generate fewer emissions per unit of meat than pastured cattle (Figure 2).

#### Smaller farms in more developed countries structurally decimate yields --- and they preclude rewilding landscapes which solves biodiversity and sequestration arguments better

**Nordhaus et al. 15** [Ted Nordhaus, economist and Sterling Professor of Economics at Yale University, Michael Shellenberger and Linus Blomqvist, “George Monbiot is wrong to suggest small farms are best for humans and nature,” The Guardian, September 25, 2015, <https://www.theguardian.com/environment/2015/sep/25/george-monbiot-is-wrong-to-suggest-small-farms-are-best-for-humans-and-nature>]

However, in his column yesterday, he rejects ecomodernism by making a sweeping claim. There is, he writes, “an inverse relationship between the size of farms and the crops they produce. The smaller they are, on average, the greater the yield per hectare.” The implication is that agricultural modernisation is neither land-sparing nor beneficial to the poor.

Nothing could be further from the truth. There are, it is true, many studies showing an inverse relationship between yields and farm size in developing regions. But the relevant comparison is not between small farms and slightly larger ones in poor countries. It is between smallholder farms in developing nations and farms of any size in developed nations (which are almost always larger than farms in poor countries).

One widely cited study found that the smallest African farms produced about 25% more yield per hectare than the largest African farms. But the average American farm produced about 10 times more yield per hectare than either. Yield gaps between farmers in rich nations and those in poor countries are profound. US farmers harvest five times more per hectare than African farmers in maize and more than three times in rice. To suggest that smallholder farmers, particularly those in subsistence rain-fed agriculture, are more productive per unit of land than large-scale modern farmers is simply wrong.

Monbiot acknowledges that the reason that small farms in poor countries have higher yields than larger ones is because they have higher labor inputs, but fails to consider the implications of this fact. In poor nations, the lack of access to alternative livelihoods for large rural populations is the reason that labor is cheap and relatively high yields can be achieved on very small farms. Awash in cheap labor and lacking access to capital, markets, and infrastructure, farmers raise yields by applying more labor.

But any nature and land-sparing vision predicated on this model of agriculture would require maintaining large rural populations throughout the developing world in a state a of deep agrarian poverty

, with no alternative livelihoods to speak of. Could you, in theory, raise yields dramatically through high inputs of labor (albeit also with healthy inputs of synthetic fertiliser, irrigation, and pesticides as well)? Perhaps. But doing so would only be possible given a very large pool of cheap or free (eg family) labor.

This seems to us to be neither a particularly plausible way to reduce human impacts on the environment nor an acceptable future for the billion people today living on less than a dollar a day. To suggest, as Monbiot does, that poor farmers are better off remaining on the farm is to suggest that they are better off remaining poor.

Without question, the journey from subsistence economies to modern livelihoods is not an easy one and moving from the farm to the city does not guarantee a better life, at least in the short term. But the last two centuries offer ample evidence that by just about every metric of human health, freedom, and material well-being, urbanisation, industrialisation, and agricultural modernisation are processes that have been overwhelmingly positive for humans.

Moreover, as a leading proponent of rewilding, we hope that Monbiot will think a bit harder about where all those rewilded landscapes in which, he hopes “nature is allowed to do its own thing, in which it can be to some extent self-willed, driven by its own dynamic processes” are likely to come from. On a planet of 7, going on 9 billion people, agricultural modernisation and intensification are clearly the most plausible path to leaving more of the Earth to nature.

#### Yes peak cropland

Blomqvist 2016 - Director of Conservation @ The Breakthrough Institute   
Linus and David Douglas, "Is Precision Agriculture the way to peak cropland," Dec 7, thebreakthrough.org/issues/the-future-of-food/is-precision-agriculture-the-way-to-peak-cropland

In sum, cropland expansion is not inevitable – but to avoid it, the world probably needs the optimistic scenarios for both crop demand and yields to come true. A net expansion of cropland between now and 2050 would not necessarily imply that peak cropland is not in sight – only that it will occur at a level higher than today. As more and more people around the world reach the limit of how much food, especially meat, they want to consume, and as population growth continues to abate, global crop demand inevitably slows down. This might allow yield growth rates to overtake demand growth rates and thus start shrinking global cropland area. Peak cropland might be on the horizon – the question is just how much damage will have been done to natural habitats by the time it occurs.

#### It’s irrelevant and can be replaced with science

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

What about the economic value of biodiversity? Biodiversity represents **nature's greatest** largess or **excess** since species appear **nearly as numerous as the stars** the Drifters admired, except that "scientists have a better understanding of how many stars there are in the galaxy than how many species there arc on Earth."70 Worldwide the variety of biodiversity is **effectively infinite**; the myriad species of plants and animals, not to mention microbes that arc probably more important, apparently **exceed our ability to count or identify them**. The "next" or "incremental" thousand species taken at random would not fetch a market price because another thousand are **immediately available**, and another thousand after that. No one has suggested an economic application, moreover, for any of the thousand species listed as threatened in the United States.77 To defend these species - or the next thousand or the thousand after that - on economic grounds is to trade convincing spiritual, aesthetic, and ethical arguments for bogus, pretextual, and disingenuous economic ones.78 As David Ehrenfeld has written, We do not know how many [plant] species are needed lo keep the planet green and healthy, but it seems very unlikely to be anywhere near the more than quarter of a million we have now. Even a mighty dominant like the American chestnut, extending over half a continent, all but disappeared without bring¬ing the eastern deciduous forest down with it. And if we turn to the invertebrates, the source of nearly all biological diversity, what biologist is willing to find a value - conventional or ecological - for all 600,000-plus species of beetles?7\* The disappearance in the wild **even of agriculturally useful species** appears to have **no effect on production**. The last wild aurochs, the progenitor of dairy and beef cattle, went extinct in Poland in 1742, yet no one believes the beef industry is threatened. The genetic material of crop species is contained in tens of thousands of landraces and cultivars in use - rice is an example - and **does not depend on the persistence of wild ancestral types**. **Genetic engineering can introduce DNA from virtually any species into virtually any other** - which allows for the **unlimited creation of biodiversity.** A neighbor of mine has collected about 4,000 different species of insects on his two-acre property in Silver Spring, Maryland. These include 500 kinds of Lepidoptera (mostly moths) - half the number another entomologist found at his residence.80 When you factor in plants and animals, the amount of "backyard biodiversity" in suburbs is astounding and far greater than you can imagine.8' Biodiversity has **no value** "at the margin" because **nature provides far more of it than anyone could possibly administer**. If one kind of moth flies off, you can easily attract hundreds of others.

#### No nitrogen planetary boundary external impact

Nordhaus et al., 2012 (Ted, Co-founder and executive director of the Breakthough Institute, Michael Shellenberger, President of the Breakthrough Institute, Linus Blomqvist, Policy Associate in the Breakthrough Institute’s Conservation and Development Program, THE PLANETARY BOUNDARIES HYPOTHESIS: A REVIEW OF THE EVIDENCE”, The Breakthrough Institute, June 2012, http://thebreakthrough.org/blog/Planetary%20Boundaries%20web.pdf)//JBS

NO GLOBAL THRESHOLD While “local to regional-scale interference with the nitrogen cycle … has induced abrupt shifts in lakes and marine ecosystems,” Rockström et al. admit that there is no evidence for any global tipping point with regards to nitrogen. 47 This puts nitrogen in the same category of non-threshold systems as freshwater and land-use change, with similar implications. Lacking a global biophysical boundary, there is no scientific justification for the specific boundary level chosen. 48 What is more, several of the justifications for the planetary boundary for nitrogen really concern biodiversity and climate, and thus do not as such justify the existence of a separate boundary for nitrogen. There is no a priori reason why nitrogen — as one of many variables influencing climate and biodiversity — could not be traded off against other factors. NET BENEFITS FOR HUMAN WELFARE AND THE HOLOCENE BASELINE The overriding problem with the suggestion to cut nitrogen additions by nearly three quarters — as implied by the chosen boundary level — is its disregard for human material welfare. It is highly questionable whether it can be said that there is simply too much reactive nitrogen in the environment, and whether a reduction in global aggregate levels would translate into a net long-term improvement in human welfare. Without synthetic fertilizers — the main human source of reactive nitrogen inputs to the environment — “the enormous increase in food production over the past century, which in turn has sustained the increase in global population, would not have been possible.”49 According to Robertson and Vitousek, the net benefits of anthropogenic nitrogen additions to the environment are “huge.”50 This suggests that the Holocene baseline may not be an appropriate target for nitrogen.

#### Climate change makes dead zones inevitable

Altiere 19, Andrew Alteiri, PhD at Brown University followed by postdocs at Northeastern University and Brown University, “Dead Zones: Oxygen Depletion in Coastal Ecosystems,” 2019, [https://www.sciencedirect.com/science/article/pii/B9780128050521000218#](https://www.sciencedirect.com/science/article/pii/B9780128050521000218)! //cc

Overall, climate change is expected to increase the severity and prevalence of hypoxia worldwide. Warming intensifies the severity of hypoxia in several ways. Over 90% of dead zones are in regions expected to experience a>2°C increase by the end of the century, and semi-enclosed coastal waters, where hypoxia is most prevalent, are expected to warm faster than the open ocean because their thermal regime is more tightly coupled to atmospheric conditions (Altieri & Gedan, 2015). However, there is some uncertainty as to how increased temperatures will act on hypoxia through the primary productivity of plankton because warming affects species specific productivity rates, plankton community structure, and rates of topdown control, all of which respond at different spatio-temporal scales (Altieri & Gedan, 2015). There is also geographic variation in the frequency, timing, and intensity of storms and precipitation events, which are expected to increase in some areas and decrease in others (Rabalais et al., 2009). For some systems, precipitation variation could overwhelm other aspects of climate in determining how hypoxia responds to climate change (Justic et al., 2005). Given the geographic variation in climate change, community structure, and dominant control pathways, system-specific models are needed to forecast the response of a given dead-zone system to climate change (Pena et al., 2010). The occurrence of dead zones worldwide is increasing at an alarming rate. The rate of discovery of hypoxic ecosystems has increased exponentially in the past half century, and a recent study identified over a hundred new sites in the Baltic Sea alone (Conley et al., 2011; Diaz & Rosenberg, 2008). This does not appear to be an artifact of increasing research effort or awareness since long-term scientific observations in systems, such as the northern Adriatic Sea, have revealed that ecosystems without previous signs of low oxygen have become newly hypoxic in recent decades (Diaz, 2001; Justic, Legovic, & Rottinisandrini, 1987). This trend was corroborated by a meta-analysis of decades-long data sets which revealed that the number and severity of hypoxic areas increased during the 20th century (Gilbert et al., 2010). Moreover, existing dead zones such as the Baltic Sea and Chesapeake Bay have grown more severe in terms of spatial extent, duration, and degree of oxygen depletion over this same time period (Rabalais et al., 2010). The vast majority of known dead zones are in the temperate zones, and, worryingly, a study that examined latitudinal trends in the number of known dead zones and research effort extrapolated that there are hundreds of tropical dead zones yet to be identified (Altieri et al., 2017). Paleontological and geological indicators including foraminiferans, glauconite, and biogenic silica from sediment cores collected in coastal ecosystems extend the historical record even further (Gooday et al., 2009). They have established that hypoxia can occur naturally, but confirm that significant increases in the number and severity of hypoxic ecosystems have been associated with developments such as industrialization of agriculture (Kemp et al., 2005; Rabalais et al., 2010; SenGupta, Turner, & Rabalais, 1996). While much of the research to date has focused on eutrophication as the primary driver of the increased frequency of dead zones (Cloern, 2001); other lines of evidence suggest that overall warming trends are contributing to increasing hypoxia prevalence in coastal areas (Altieri & Gedan, 2015; Gilbert et al., 2010).

## Acceleration

#### Intensive ag is necessary to solve warming

Swain ‘16 - Senior Analyst @ the Breakthrough Institute   
[Marian, "An Outlook on Omnivorism and the Environmental “Hoofprint” of Livestock," Dec 14, https://thebreakthrough.org/index.php/issues/the-future-of-food/the-future-of-meat]

Greenhouse Gas Emissions

The difference in productivity between extensive and intensive production systems has major climate implications. Growing animals to slaughter weight faster can dramatically reduce emissions, most notably for beef. Fully two-thirds of all greenhouse emissions from global beef production consist of methane from enteric fermentation, a natural process that occurs during digestion.39 Cows belch out enteric methane emissions throughout their lifetime, so getting cows to slaughter weight faster also reduces the amount of time they are emitting methane. Intensive systems realize these environmental gains; in the United States, for example, grain-finished cattle take a fraction of the time to reach slaughter weight compared to grass-finished cattle.40 Feedlot-finished cattle are also usually larger than pastured cattle, which means each cow’s emissions are divided by a larger amount of meat.41

Producing feeds for intensive beef production also generates greenhouse emissions, but since animals only occupy feedlots for a short period, the added emissions from feed production are dwarfed by the savings from months of avoided enteric fermentation emissions.42 Feed emissions result from general agricultural practice (fertilizer production, machinery), but can also be attributed to land-use change if the feeds are sourced from a region undergoing deforestation for agricultural conversion.

When it comes to the question of emissions reductions, the role of carbon sequestration in cattle grazing has gained increased attention in recent years. Although well-managed pasturelands can help soils sequester carbon43 an equilibrium in soil carbon is reached fairly quickly,44 and the carbon benefits are not enough to offset the overall higher emissions in grazing-based ranching systems.45 Furthermore, the benefits of good pasture management can accrue to both grass-finished and feedlot cattle, since both spend time on pasture. Ultimately, due to the difference in productivity and thus in enteric fermentation emissions, feedlot-finished cattle generate fewer emissions per unit of meat than pastured cattle (Figure 2).

# 1NR

## Infrastructure

#### Biden’s on track to pass both bills but can’t lose a single vote.

Foran et al. ‘10/28 [Clare; 10/28/21; congressional reporter for CNN Politics; et al.; "House Democrats again delay infrastructure vote amid party divisions," https://www.cnn.com/2021/10/28/politics/biden-agenda-deal-democrats/index.html]

Notably, however, Manchin signaled support for a $1.75 trillion top line for the package.

Asked by CNN if that price was too high, he said, "No," adding, "That was negotiated."

This is the first public indication that Manchin will accept a price tag higher than $1.5 trillion, which he had previously said was the figure he was willing to settle on.

And despite the scrapped infrastructure vote, the White House expressed optimism that both bills would eventually pass. "Legislative text is starting to become public, and the road to passing both critical parts of the President's plan to make our economy deliver for middle class families—not just the wealthy—is clearer than ever," White House press secretary Jen Psaki said in a statement Thursday evening.

'We are going to pass both bills'

As she left the final House vote of the night, Rep. Pramila Jayapal -- the chair of the Congressional Progressive Caucus, who has said that just having a framework on the larger spending plan is not enough -- told reporters, "We are going to pass both bills."

"The President said he believes he's got 50 votes in the Senate and I think it's a lot for him to say that," the Washington state Democrat said. She has made clear, though, that progressives want a vote on both bills in the House at the same time.

Earlier in the day, after a separate meeting with House progressives, she had said, "Everyone in the room enthusiastically endorsed a resolution that approves in principle the framework the President laid out today."

"We intend to vote for both bills when the Build Back Better Act is ready," she said, referring to the larger climate and economic package. But, she added, "we do need the vote on both bills in the House at the same time."

"We have 96, 98% of the caucus on the same page," Democratic Rep. Alexandria Ocasio-Cortez of New York said. "We just need to figure out what these two folks are willing to commit to and once we get real clarity on that, on what is a yes, then I think we'll be able to move forward," she said of Manchin and Sinema.

Senate Democrats cannot afford to lose a single vote to pass the bill under a process they plan to use known as budget reconciliation.

#### Vote ready next week---delay lowered the threshold for passage.

Lillis ‘10/29 [Mike; 10/29/21; Senior Politics Reporter for the Hill; "Progressives see infrastructure vote next week," https://thehill.com/homenews/house/579179-progressives-see-infrastructure-vote-next-week/]

The progressives who bucked their president to block an infrastructure vote this week also lowered the bar for moving an even larger social benefits package at the heart of Joe Biden's domestic policy agenda.

It's a two-step dance that's rankled party leaders in the near-term, but simultaneously paved the way for quicker action on both proposals — perhaps as early as next week.

“I don't think it'll take that long,” Rep. Pramila Jayapal (D-Wash.), chair of the Congressional Progressive Caucus, said as lawmakers headed home this week without a deal.

The timeline will hinge on the resolution of a series of outstanding issues still under negotiation within the “family” benefits package, as well as the drafting of the legislative language reflecting those lingering decisions. But with much of the text already released — and with the Progressive Caucus already endorsing that legislative framework — the liberals say both bills could be on the floor in a matter of days.

“We have the text; that's what we needed,” said Jayapal.

“I am renewedly optimistic,” said Rep. Don Beyer (D-Va.), a fellow progressive who leads the Joint Economic Committee, which makes recommendations on how to improve the U.S. economy. Beyer told The Hill on Friday that he expects the House to vote on one package, likely the infrastructure bill, on Tuesday, then take up the $1.75 trillion social and climate spending package later in the week.

“I feel really good about next week,” added a third House progressive, who like Jayapal, had been holding the line in opposing the infrastructure bill.

The burst of optimism follows shortly on the heels of an embarrassing setback for Biden and Democratic leaders, who were racing to stage a Thursday vote on a popular $1.2 trillion infrastructure bill, which was passed by the Senate in August.

Biden had visited the Capitol on Thursday morning to rally House Democrats behind both parts of his two-prong economic agenda, touting a newly released “framework” governing the $1.75 trillion social spending piece. And Speaker Nancy Pelosi (D-Calif.) urged lawmakers to support the infrastructure bill in a vote she’d hoped to bring later in the day.

Jayapal had led the successful opposition to that plan, speaking for a host of liberals who want deeper assurances that the larger “family” benefits bill not only passes their muster, in terms of policy specifics, but also has enough Senate support to reach Biden’s desk. Only then will they back the bipartisan infrastructure bill, known informally as the BIF.

"If we vote for the BIF, I think that that's it. I think we lose the other bill,” said Rep. Juan Vargas (D-Calif.). “I don't trust what the senators are going to do.”

At the same time, the progressives rolled back their policy demands and lowered the tactical threshold for winning their votes on infrastructure. While leading liberals had initially insisted that their votes would hinge on Senate passage of the larger benefits package, now some are saying that a spoken commitment from the Senate centrist holdouts — Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — would be enough to win their backing.

#### Bills are linked and ready to pass---Congress agrees on the framework, and it’s paid for.

Cathey et al. ‘10/28 [Libby; 10/28/21; staff writer for ABC News; et al.; "House delays infrastructure vote as Biden set to land overseas without deal," https://abcnews.go.com/Politics/vote-expected-infrastructure-week/story?id=80832593]

Democratic leaders were eager to put the infrastructure bill on the floor as soon as Thursday, but Pelosi -- who doesn't call for votes unless she knows has the support for passage -- hadn't officially called for one.

House Progressives emerged from a closed-door meeting and commended Biden for framework, but they still insisted they will vote no on the infrastructure bill if it hit the floor until a firm deal is made on the larger spending package.

"There are too many no votes for the BIF to pass today," said Chair of the Congressional Progressive Caucus Pramila Jayapal, D-Wash.

"He did not ask for a vote on the bill today," she said earlier in the day, referring to the Senate-passed bipartisan infrastructure bill. "The speaker did. He did not. He said he wants votes on both bills and said what we do on these two bills is going to be determinative for how the world sees us."

Before his speech, the White House teased Biden's remarks on his domestic agenda ahead his international trip, saying he is "delivering" on his promises to rebuild the middle class.

"After hearing input from all sides and negotiating in good faith with Senators Manchin and Sinema, Congressional Leadership, and a broad swath of Members of Congress, President Biden is announcing a framework for the Build Back Better Act," said a White House statement that notably did not say he had an agreement.

"President Biden is confident this is a framework that can pass both houses of Congress, and he looks forward to signing it into law. He calls on Congress to take up this historic bill – in addition to the Bipartisan Infrastructure Investment and Jobs Act – as quickly as possible," the statement said.

The White House said "the framework will save most American families more than half of their spending on child care, deliver two years of free preschool for every 3- and 4-year-old in America, give more than 35 million families a major tax cut by extending the expanded Child Tax Credit, and expand access to high-quality home care for older Americans and people with disabilities."

The Child Tax Credit expansion, which Biden proposed extending until 2025, would now be only until the end of 2022. Paid family and medical leave, which Biden had originally proposed to be 12 weeks and then scaled back to four weeks, appeared to have been dropped altogether after Manchin objected, despite progressives fighting back. Two free years of community college that Biden had promised is not included.

It also claimed it represents "the largest effort to combat climate change in American history" and "the biggest expansion of affordable health care coverage in a decade," saying it would "reduce premiums for more than 9 million Americans by extending the expanded Premium Tax Credit, deliver health care coverage to up to 4 million uninsured people in states that have locked them out of Medicaid, and help older Americans access affordable hearing care by expanding Medicare."

An expansion of Medicare to cover dental and vision, a top priority of Sen. Bernie Sanders, is not in the framework.

And, the White House said, "it is fully paid for ... by making sure that large, profitable corporations can't zero out their tax bills, no longer rewarding corporations that shift jobs and profits overseas, asking more from millionaires and billionaires, and stopping rich Americans from cheating on their tax bills."

#### Progressives are on board---votes coming as soon as this week.

Brufke ‘10/28 [Juliegrace; 10/28/21; writer for the New York Post; "House Dems punt infrastructure for 3rd time, pass stop-gap highway bill instead," https://nypost.com/2021/10/28/house-dems-punt-infrastructure-again-pass-stop-gap-highway-bill/]

The far-left flank of the party has asserted that they believe both the hard infrastructure bill and the massive social spending bill should be passed in conjunction with one another

While proponents of acting on the bipartisan bill as a standalone argue that the failure to pass the measure dealt a blow to the president, who has faced dwindling numbers in the polls, liberal lawmakers argued that they could have a deal as soon as next week, with talks expected to continue over the weekend.

Congressional Progressive Caucus Chair Pramila Jayapal (D-Wash.) added that her caucus endorsed the framework, asserting she does not believe the lack of passage makes the president look weak.

“We sent him off with a ringing endorsement of the framework that he presented to the caucus today. I told anybody that would listen, that we did not have the votes for the BIF vote tonight,” she told reporters.

“The president did not ask for this vote today, I just want to be very clear about that. The Speaker did, but the president did not, the president said he wants us to pass both bills and that this coming week was going to be critical for them. We will deliver both these bills to him from the House.”

#### It is set to pass next week

Stanage '10/29 [Niall, "The Memo: Democrats stall out on brink of victory," https://thehill.com/homenews/administration/579042-the-memo-democrats-stall-out-on-brink-of-victory]

“The biggest obstacle that Democrats are facing right now is the lack of progress,” said Tad Devine, a strategist who held a senior role on Sen. Bernie Sanders’s (I-Vt.) 2016 presidential bid. “If they make progress, they can begin to tell a story. The Republicans have a well-developed story, and the Democrats are negotiating something that nobody seems to understand. That’s a loser.”

The expectation on Capitol Hill is that both bills will pass eventually — perhaps sometime next week. And voices across the Democratic spectrum emphasize that such an outcome would be a significant victory.

Many Democrats fairly point out that combined infrastructure and social spending legislation amounting to almost $3 trillion is no minor matter — especially coming on top of a COVID-19 relief bill signed into law in March that was worth almost another $2 trillion.

In addition, even the pared back version of the social spending bill includes universal pre-kindergarten, an extension of a $300 per month child tax credit, an expansion of Medicare to cover hearing issues and more than $500 billion to combat climate change.

Across the party, there is a near desperation to enact the legislation so that voters can feel the benefits — or at least know those benefits are coming — before next year’s midterm elections.

Even on the left, there is an acknowledgement that incremental progress is vital.

#### No antitrust now because it requires PC.

Folio ’21 [Joseph Charles Folio III, Lisa M. Phelan, Jeff Jaeckel, and Alexander Paul Okuliar; March 22; International law firm representing investment funds and startup companies; Morrison & Foerster, “Antitrust Update: Up and Down the Avenue,” <https://www.mofo.com/resources/insights/210322-atr-update.html> KS]

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.

#### Unites industry against Biden.

Kang ’21 [Cecilia Kang; January 26; reporter; the New York Times, “Democratic Congress Prepares to Take on Big Tech,” https://www.nytimes.com/2021/01/26/technology/congress-antitrust-tech.html]

Her bill, as well as other laws proposed to limit the power of the tech companies, will face steep opposition. In 2020, tech companies again spent more than other industries in Washington. Facebook, with lawsuits from federal and state enforcement officials, spent almost $20 million on lobbying, up 18 percent from the previous year. Amazon spent about $18 million in lobbying, up about 11 percent from the prior year.

Internet start-ups are also wary of regulations that could stymie their exit strategies to merge with larger companies as well as changes to rules that could hold them liable for the content they host. And agriculture, pharmaceutical and other industries will also probably balk at changes in antitrust laws.

#### Antitrust exacerbates intraparty divisions AND dredges up filibuster conversations.

Sagers ’21 [Christopher; February; Law Professor at Cleveland State University; The New US Antitrust Administration, “American Antitrust and the Near Term: Consistency, One Imagines, and Some Reasons Why,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en]

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]

17. So, while I think that antitrust law will remain basically the same for the next four years, it is emphatically not because we all agree that it should. I think it is fairly likely that less than a majority of us do. It will be because the only institutions that matter are so radically, heavily stacked against change.

#### Private stakeholders vilify the law.

Broder ’10 [Douglas; 2010; the co-chair of the global antitrust practice at K&L Gates LLP; U.S. Antitrust Law and Enforcement, “Overview and History of U.S. Antitrust Enforcement,” Ch. 1, p. 4]

Antitrust has long been the subject of political controversy in the United States, controversy that has more recently been exported to Europe and, increasingly, the rest of the world. From the passage of the Sherman Act in 1890 to the present, accused monopolists and other subjects of government or private antitrust actions have vilified the antitrust laws or their enforcers as anti-business or as outmoded and lacking relevance to modern business.

#### Obama administration proves that new antitrust rules for ag causes policy hostage-taking by the House.

Khan ’12 [Lina; November/December; JD at Yale Law School, antitrust expert, now in the Biden FTC; the Washington Monthly, “Obama’s Game of Chicken,” https://washingtonmonthly.com/magazine/novdec-2012/obamas-game-of-chicken/

The change that finally upended this balance came in 1981. A group of Chicago School economists and lawyers working in the Reagan administration introduced a new interpretation of antitrust laws. Traditionally, the goal of antitrust legislation had been to promote competition by weighing various political, social, and economic factors. But under Reagan, the Department of Justice narrowed the scope of those laws to promote primarily “consumer welfare,” based on “efficiency considerations.” In other words, the point of antitrust law would no longer be to promote competition by maintaining open markets; it was, at least in theory, to increase our access to cheap goods. Though disguised as an arcane legal revision, this shift was radical. It ushered in a wave of mergers that, throughout the course of the following decades, would transform agriculture markets.

Although the change was strongly opposed by centrists in both parties, a number of left-wing academics and consumer activists in the Democratic Party embraced the new goal of promoting efficiency. The courts also soon began to reflect this political shift. In 1983, after Cargill, the nation’s second-largest meatpacker, moved to purchase Spencer Beef, the third largest, a rival meatpacker named Montfort filed a lawsuit claiming that the acquisition would harm competition in the industry. In a 6-2 decision three years later, the Supreme Court ruled in favor of Cargill. The decision set a precedent limiting competitors’ ability to challenge mergers, and helped catalyze a rapid series of buy-ups across the agriculture industry. In 1980, the four biggest meatpacking companies in the country controlled 36 percent of the market. Ten years later, their share had doubled, to 72 percent.

As mentioned above, today the share of the market controlled by the four biggest meatpackers has swelled to 82 percent. In pork, the four biggest packers control 63 percent. In poultry, the four largest broiler companies—Tyson, Pilgrim’s Pride, Perdue, and Sanderson—control 53 percent of the market. In all these sectors—but especially poultry—these numbers greatly understate the political effects of concentration. At the local level, which is what matters to the individual farmer, there is increasingly only one buyer in any region.

The practical result of all this consolidation is that while there are still many independent farmers, there are fewer and fewer processing companies to which farmers can sell. If a farmer doesn’t like the terms or price given by one company, he increasingly has nowhere else to go—and the companies know it. With the balance of power upended, the companies are now free to dictate increasingly outrageous terms to the farmers.

At the hearing in Alabama in 2010, poultry farmers laid out how the arrangement now works. Staples, for example, described how processing companies routinely demand equipment upgrades that push independent farmers into heavy debt. In order to keep up with the companies’ facility requirements, farmers often must mortgage their farms and homes. With contracts often lasting only sixty days, and no real option to switch processing companies at the end of the contract period, farmers must either accept the terms they’re given—and stay on the company’s good side—or risk bankruptcy. “[W]ith the contracts that we’re offered now it’s either a take-it or leave-it situation,” Staples said.

Tom Green, another Alabama farmer at the hearing, recounted what happened when he contested a contract that included a mandatory arbitration clause that would take away his right to a jury trial if a dispute arose. When he took issue with the clause, the processing company refused to work with him. Absent other options, Green and his wife, Ruth, lost their farm. “Ruth and I chose to stand up for our principles,” Green, a former infantryman and pilot in Vietnam, said at the hearing. “We did not give up a fundamental right to access the public court … which is guaranteed by our Constitution, regardless of price. I had flown too many combat missions defending that Constitution to forfeit it. It was truly ironic that protecting one right, we lost another. We lost the right to property.”

Of all the abuses farmers described to officials in Alabama, the one they kept returning to was the “tournament system,” a payment scheme designed, according to the processing companies, to promote efficiency among farmers. Unlike a traditional market, where every pound of chicken of the same grade fetches the same price, the tournament system allows companies to pit one farmer against another by ranking each farmer based on how he performs in “competition” against his fellow farmers. The idea is that the healthier and heavier the chickens a farmer produces with a set amount of feed, the higher he’s ranked in relation to the entire set of farmers who deliver their birds to the same processing plant on that same day. The higher he’s ranked, the more a processing company pays him per pound.

One problem with the tournament system is that no standards regulate the quality of feed and chicks that processing companies deliver to farmers, which means there’s no way for a farmer to know if he’s getting the same inputs as the other farmers against whom the company makes him compete. Another problem is that the processing companies often weigh the full-grown chickens behind closed doors, out of the sight of the farmer who raised them. This enables the companies to favor or punish whichever farmers they, or their local foremen, choose. Any farmer who complains about the system, or about the specific provisions of a contract, or who even signs some sort of petition that a processing company doesn’t like, risks seeing his “earnings” arbitrarily cut.

Farmers are still expected to own their own land and to bear all the risks of investing in facilities, like chicken houses, just as they did when they sold into fully open and competitive markets. But almost all the authority over how they run their farm and what they earn now belongs to the companies. “A modern plantation system is what it is,” said Robert Taylor, a professor of agriculture economics at Auburn University who has worked with poultry farmers for close to three decades. “Except this is worse, because the grower provides not just the labor, but the capital, too.”

In most other industries, labor law protects workers from such forms of manipulation and exploitation. Farmers, though, aren’t protected under labor law because—at least until recently—it was assumed that open market competition enabled them to take their business to another buyer. Today, however, even as they become more like employees, laboring for a single company, the law still treats farmers as if they were their own masters. “The shift to vertical integration means that farmers no longer own what they are producing,” explains Mark Lauritsen, director of the food processing, packing, and manufacturing division at United Food and Commercial Workers, the union that represents workers across many industries, including agriculture and food processing. “They are selling their labor—but they don’t have the rights that usually come with that arrangement.”

The specific type of contract and the payment scheme offered by companies vary by sector, and the hearings indicated that the worst practices are generally found in the poultry industry. What applies across the board—in cattle ranching and dairy and hog farming—is the stark and growing imbalance of power between the farmers who grow our food and the companies who process it for us, and how this imbalance enables practices unimaginable in any competitive market.

Watts, the farmer who drove from North Carolina to attend the Alabama hearing, says he and his fellow poultry farmers are independent only in name. “What I can make through my work is entirely dictated by many hands before it ever gets to me,” he said in an interview. “My destiny is no longer controlled by me.”

Farmers and activists have been fighting to restore fair agriculture markets since the 1980s with little to show for it. Both Democratic and Republican senators have periodically introduced legislation to level the playing field for independent farmers and ranchers, but those measures have repeatedly collapsed under the weight of corporate lobbies.

Most consequentially for farmers, the once-groundbreaking Packers and Stockyards Act has been weakened over the decades by both the courts’ and the executive branch’s narrow interpretation of its broad, sometimes ambiguous language. As a result, the act is no longer sufficiently powerful to protect their rights. The administration of George W. Bush essentially halted enforcement of the act entirely. In 2006 the USDA’s own inspector general reported that the agency responsible for enforcing the act, the Grain Inspection, Packers and Stockyards Administration (GIPSA), had been deliberately suppressing investigations and blocking penalties on companies violating the law. The inspector general found that Deputy Administrator JoAnn Waterfield was hiding at least fifty enforcement actions in her desk drawer.

In 2008, independent farmers seemed at last to have caught two big breaks. First, in the 2008 Farm Bill, Congress instructed the USDA to revise and update specific issues that the eighty-year-old act either had never addressed or had left overly vague. As the agency regulating the Packers and Stockyards Act, the USDA, and, more specifically, its subsidiary body GIPSA, already had the power to revise and supplement its laws. Now it had a political mandate to do so, too.

The second big break came during the 2008 campaign, when Senator Barack Obama spoke directly about the need to address such abuse of independent farmers. Four days before the Iowa caucus, he even organized a conference call with independent farmers to discuss their concerns. In the primary, the farmers’ votes swung toward Obama, helping him beat Hillary Clinton and making him a serious contender for the nomination. In the general election, the appeal may have helped Obama win some rural, traditionally Republican counties in Colorado and North Carolina.

Some farmers and activists criticized Obama’s choice of Vilsack, a former governor of Iowa, to lead the Agriculture Department, mainly because of his close ties to biotech companies, including Monsanto. But the administration soon balanced this out by appointing Mississippi rancher and trial attorney Dudley Butler to head GIPSA. Farmers and ranchers trusted Butler, who had been a private lawyer for thirty years and had long been on the front lines representing chicken farmers against processing companies.

In August 2009, eight months into Obama’s first term, the administration announced plans for a series of hearings the following year—the most high-level examination of agriculture in decades, overseen by the new antitrust chief, Christine Varney. At the opening event in Ankeny, Iowa, in March 2010, Attorney General Holder spoke boldly, assuring the crowd that reform was now a Cabinet-level priority. “Big is not necessarily bad, but big can be bad if the power that comes from being big is misused,” he said. “That is simply not something that this Department of Justice is going to stand for. We will use every tool we have to ensure fairness in the marketplace.”

Over the next nine months, officials held another four full-day hearings, in Alabama, Wisconsin, Colorado, and Washington, D.C., to investigate the poultry, dairy, cattle, and seed industries, as well as to look at the discrepancy between the price consumers pay for food and the price farmers receive for producing it. Each hearing featured several panels with a range of perspectives, and each included time for comments from many of the thousands of farmers, ranchers, industry representatives, activists, and academics who attended. In addition to the hours of testimony collected publicly, the administration provided computers in adjacent rooms where those reluctant to speak out could privately register their concerns and fears.

The administration also consulted experts like Taylor, the professor at Auburn University. At one point, the USDA sent an entire team of economists and lawyers to Alabama with a full day’s worth of questions. “It was clear these were conscientious, committed officials who had spent a lot of care investigating the issues,” Taylor said.

During the course of the hearings, the USDA also began to address Congress’s 2008 Farm Bill instruction that the department revise and update elements of the Packers and Stockyards Act. By midsummer, the USDA had rolled out a series of far-reaching revisions, addressing many of the farmers’ concerns. One of the proposed changes would have specifically banned company retaliation against farmers who tried to negotiate the terms of a contract. Another would have required any company that forced farmers to make capital investments to offer contracts long enough for the farmers to recoup some minimum amount of that investment. This series of proposed updates and revisions to the Packers and Stockyards Act later came to be known collectively as the “GIPSA rules.”

While updating an old law might not sound like a big deal, farmers widely regarded the proposed GIPSA rules as serious game changers. “Before, they would throw us a little bone once in a while,” Watts said. “But with these rules we knew they meant business.”

Because the USDA has the legal authority to revise the rules under the Packers and Stockyards Act, Congress didn’t actually have to formally vote on the new rules. Congress has the right to discuss them and request additional information, but it has no direct authority over them. In the Senate, Tom Harkin, Chuck Grassley, and Tim Johnson, longtime advocates of reform in the agriculture industry, voiced their support for the proposed updates. Many House members, however, began to attack the rules, especially once the processing companies came out strongly against them.

In July 2010, less than a month after the USDA published its proposed rules, the House Agriculture Committee, which was led by Michigan Minnesota Democrat Collin Peterson, called a hearing to question USDA officials on the revisions. At the hearing a group of mostly Republican lawmakers, joined by Jim Costa of California and a few other Democrats, assailed the proposed rules for their wide-reaching impact. They accused the USDA of ignoring the concerns of industry groups like the National Cattlemen’s Beef Association and the National Chicken Council, which represent processing companies like Cargill and Tyson. After the House hearing, the USDA agreed to extend the period for public comments on the proposed rules from the regular sixty days to a total of 150.

Then, in October, House members—led by Peterson, Agriculture Committee Ranking Member Frank Lucas (Republican from Oklahoma) and Livestock, Dairy, and Poultry Subcommittee Chairman David Scott (Democrat from Georgia) and Ranking Member Randy Neugebauer (Republican from Texas)—delivered a letter to Vilsack. The letter argued that the USDA, despite nationwide hearings and dozens of investigations, interviews, and fact-finding missions, had not sufficiently justified the need for some of the new farmer protections, and urged the agency to subject the rules to more thorough economic analysis. The letter was signed by sixty-eight Republicans and forty-seven Democrats.

In the November 2010 midterm elections, a surge of successful Tea Party candidates handed Republicans control of the House. In the aftermath of the election, the administration continued its reform efforts. If anything, by the last of the five hearings in December the tone of the reformers had become more radical, centering on the political and moral nature of what many American farmers now suffer. “We’ve got to be looking at power,” explained Bert Foer, head of the American Antitrust Institute, at the hearing. “We’ve got to be looking at the negotiating realities that occur in the marketplace and not simply what the effect on the consumer price is going to be.”

But in the new year, a new political reality set in. In January 2011, Obama appointed Bill Daley, former commerce secretary and top executive at JPMorgan Chase, as his chief of staff. Part of a wider post-election shake-up at the White House, Daley’s appointment signaled that the administration was now intent on compromising with Republicans, especially on economic issues. Many Republicans, though, viewed the election as a mandate for even more radical obstruction.

In February 2011, the House Agriculture Committee again pushed Vilsack on the economic analysis of the proposed Packers and Stockyards rules, and over the next few months various subcommittees orchestrated hearings for trade groups to voice their objections. According to one industry report, paid for by the National Meat Association, the proposed USDA rules would levy a $1.64, billion blow to the meat industry and lead to 22,800 job losses. The report also claimed that the rules would, over time, decrease beef, pork, and poultry production across the board.

In May 2011, Costa, the Californian Democrat, Reid Ribble, a House Republican from Wisconsin, and Lucas, now the chairman of the Agriculture Committee, circulated a letter asking Vilsack to withdraw all proposed rule changes entirely. “[W]e are confident that any such rule will not be looked upon favorably by Congress,” the congressmen wrote. Though their letter was signed by 147 members—more than a third of the House, including twenty-five Democrats and thirty Tea Party Republicans—the USDA didn’t accede to the request. But officials did begin to water down the proposed rules.

The next month, in June 2011, the House Appropriations Committee included a crucial rider in its funding bill. The rider was designed to strip the USDA of the funds it needed to finalize and implement the strongest of the proposed rules. Farmers and activists tried to fight the rider, which was backed by corporate livestock and poultry lobbies. Advocacy groups flew in farmers from around the country to meet with members of Congress, and 6,000 people called in to the White House to express their support. During a debate over the rider, Ohio Democrat Marcy Kaptur, the only representative to come out strongly in favor of the rules, slammed the House for “standing with the few big meatpackers and against the many thousands and thousands of producers.” Even the American Farm Bureau, a group that often champions policies favorable to agribusiness, wrote an open letter to Congress opposing the rider.

But the farmers and activists found that they were now largely alone. By late 2011, the administration was in full retreat. “The White House and USDA became very timid and really didn’t do much to disabuse the critics spreading untruths about the reforms,” said Patrick Woodall, research director with Food & Water Watch, which organized some of the efforts in support of the proposed rules. “They all fell silent.”

The Senate supported the Packers and Stockyards revisions in its appropriations bill in September 2011. But the House, as Woodall put it, “went on a full-out offensive,” holding hostage everything from food stamps to food-safety measures. “Nobody wants to have to defend a policy position where the victims are low-income kids, and that’s where the balance ultimately was,” Woodall said. Even Senators Harkin and Johnson, who only a month earlier had strongly voiced their support for the GIPSA rules, backed down.

By November 2011, it was clear that the reformers had lost. The rider had passed. The rules as they had been intended were dead. The most ambitious, far-reaching campaign to reform the agricultural industry in forty years was over, less than two years after it had begun.

In early December, the USDA published four watered-down revisions and updates to the Packers and Stockyards Act. The only full-fledged rule to come into effect prohibits mandatory arbitration clauses in poultry farmers’ contracts—vindication for many, including Tom Green and his wife, Ruth, but hardly a sweeping victory. The other three revisions are vague “guidelines” for the USDA. None of them explicitly prohibit arbitrary and exploitative conduct by the processing companies under the notorious tournament system.

In January 2012, Butler resigned from the USDA. Then in May, the DOJ quietly published a report summarizing the five nationwide hearings conducted in 2010. The report detailed both a lack of competition in the industry and abusive behavior. It went on to claim that the DOJ couldn’t act to address these wrongs because, no matter how outrageous the conduct of the processing companies, their actions did not amount to “harm to competition” as defined by the current antitrust framework.

#### Powerful agribusiness interests in Washington will backlash against antitrust measures.

**Hackett ’21** [Billy; February 12; National Sustainable Agriculture Coalition Policy Analyst; National Sustainable Agriculture Coalition; “The Time is Ripe for Competition and Antitrust Reform in Agriculture,” https://sustainableagriculture.net/blog/the-time-is-ripe-for-competition-and-antitrust-reform-in-agriculture/]

A nationwide poll this year revealed that a striking 81 percent of rural voters would support a candidate who said, “A handful of corporate monopolies now run our entire food system. We need a moratorium on factory farms and corporate monopolies in food and agriculture.” Just ¼ of these self-proclaimed rural voters identify as “liberal” or “progresssive,” suggesting that the issue transcends the bitter partisanship which defines our age. Despite the salience of this issue in rural communities, neither the Republican nor Democratic party have formally claimed its mantle.

Isolated attempts have been made by policymakers on both sides of the aisle to address anticompetitive practices, but no meaningful reforms have passed through Congress. The Farm Bill does not acknowledge the corporate capture of the food system, instead perpetuating the bifurcation of the food system with the consolidation of financial resources and land in the hands of its largest actors. If a popular consensus exists to democratize the food system, why do these attempts consistently fail?

Part of this is the commanding voice of agribusiness interests in Washington. Nine political action committees (PACs) representing large pork, dairy, corn, soybeans, wheat, beef, cotton, and chicken producer groups donated $3.2 million in campaign contributions to farm-state lawmakers through October of the 2020 election cycle. These lobbying groups donated most heavily to Republican campaign committees, though outgoing House Agriculture Chair Collin Peterson (D-MN-7) earned the most contributions of any individual. Without campaign finance reform, the ability of these corporations to influence legislation to maintain the status quo, or at most allow modest reforms within acceptable guardrails, will continue unabated.

#### Executive action trades off with the agenda.

Christenson ’15 [Dino and Douglas L. Kriner; 2015; Assistant and Associate Professors of Political Science at Boston University; Case Western University Law Review, “Political Constraints on Unilateral Executive Action,” vol. 65, no. 4]

A second constraining force is public opinion. In addition to anticipating the reaction of Congress, presidents also anticipate the reaction of the American people to a bold assertion of presidential unilateral power.42 Unilateral action may provide a potent mechanism for the president to carry the day and move policy closer to his ideal preferences on a specific issue. However, if it erodes his overall support among the general public, it could come at a significant long-term cost in terms of future policy priorities that overwhelm any short-term policy gain. Decades of scholarship have shown that presidential approval is a vitally important resource for presidents as they pursue their policy agendas in Congress.43 Stripped of public support and the political pressure it generates, presidents with low approval ratings face long odds in advancing their programmatic agendas in Washington.

How does the public respond to bold assertions of unilateral power? Relevant polling data are rather scarce; however, the extant evidence, despite its limitations, suggests that the public holds deep reservations about broad assertions of unilateral presidential power.44 For example, in January 2014 an ABC News/Washington Post poll revealed an evenly divided public on the idea of unilateral action in the abstract. The question began, “Presidents have the power in some cases to bypass Congress and take action by executive order to accomplish their administration’s goals.” Respondents were then asked whether they supported or opposed this approach. Just more than 40 percent strongly or somewhat supported presidents pursuing their policy goals via executive order; 46 percent opposed a unilateral leadership approach, with 25 percent strongly opposing it.45 Polling data on more concrete issues often reveal even greater public concern with a unilateral approach. For example, a July 2014 poll referencing President Obama’s unilateral changes to the ACA, which prompted the House lawsuit with which this Article began, asked Americans, “Do you think President (Barack) Obama exceeded his authority under the Constitution when he changed the health care law on his own by executive order?” A substantial majority, 58 percent, said yes, the president had exceeded his constitutional authority. Only 37 percent replied that no, he had not done so.46

Finally, polls that explicitly measure public support for policy action through presidential unilateral initiatives versus through the legislative process show a strong preference for the latter. For example, a December 2001 poll reveals a widespread public preference for joint presidential-congressional action—even in the immediate aftermath of 9/11 when President George W. Bush enjoyed the highest approval ratings ever recorded. After a series of questions measuring popular support for a number of potential changes to criminal procedures after 9/11, a CBS/New York Times poll asked, “Do you think changes to the way in which government agencies seek, investigate and prosecute suspected criminals should be decided by the President alone through an executive order, or through legislation enacted by the Congress and approved by the President?” A full 82 percent said that such changes should be made by both branches through the legislative process. Only 12 percent supported the president acting alone through executive order.47 Thus, presidents have good reason to worry that acting unilaterally on a high-profile issue or too frequently may trigger a public backlash that will undermine their efforts to achieve other policy priorities. Presidents face strong incentives to be strategic in their use of unilateral powers.

Moreover, other institutions, particularly Congress, may play an important role—even when presidents know that efforts to overturn an executive action will fail—by engaging in the political debate and mobilizing public pressure against the president should he act unilaterally contra congressional preferences. Decades of political science scholarship have demonstrated that the public lacks systematic knowledge of politics and therefore relies heavily on heuristics when forming their political judgments.48 Political elites thus become key cue-givers who help inform and shape public opinion.49 Finally, citizens acquire most of their knowledge about politics from the mass media. Scholars have long noted that the media depend on official Washington sources for information. However, a robust literature in political communications goes further and argues that the media tend “to ‘index’ the range of voices and viewpoints in both news and editorials according to the range of views expressed in mainstream government debate about a given topic.”50 When other political actors, particularly members of Congress, object and criticize presidential actions in the public sphere, they are all but assured of receiving considerable media coverage, and they are well-positioned to influence public opinion against the executive branch.51

In essence, we argue that while the statutory and legal constraints on presidential unilateral power are weak, the political constraints are quite robust.52 Unilateral actions that could provoke public ire and erode the president’s political capital, thereby undermining later efforts to pursue other aspects of the president’s programmatic agenda, may fail a simple cost-benefit calculation. The informal political costs of acting—even when Congress and the courts are almost certainly unwilling or unable to strike down the action—may outweigh the policy benefits of acting unilaterally. These political costs, which are not accounted for in most extant models of unilateral politics, are tangible and substantial; indeed, they may explain why presidents fail to act unilaterally as aggressively and on as many issues across the gamut of policy as formal models suggest they should.

#### The President gets blamed.

Kovacs ’18 [Kathryn E; Summer; Professor at the University of Rutgers School of Law; Administrative Law Review, “Rules About Rulemaking and The Rise of the Unitary Executive,” vol. 70]

Clearly, there are other reasons for this phenomenon: among them, the President's desire to take political credit or, on the flip side, his recognition that, whatever the outcome, he will be saddled with the political blame. The American public seems to equate the President with the Fourth Branch. Advances in technology and media may be exacerbating this effect. This phenomenon, however, cuts both ways. The President may be inclined to make policy decisions himself so that he can take the credit if the outcome is politically popular, but he may prefer to leave policymaking to his subordinates so that he can distance himself if the outcome is not politically popular. This does not, therefore, account fully for the dramatic [\*557] rise in presidential direct action described below.

[FOOTNOTE]

Daniel A. Farber, Presidential Administration Under Trump 23 (Aug. 9, 2017) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3015591 (envisioning a "feedback cycle in which presidents take control of major agency decisions, fortifying the public's tendency to assign blame to the president for unpopular outcomes, which in turn strengthens the pressure on the president to assert control"); see also COOPER, supra note 333, at 65, 95; Cary Coglianese & Kristin Firth, Separation of Powers Legitimacy: An Empirical Inquiry into Norms About Power, 164 U. PA. L. REV. 1869, 1900 (2016) (finding that people are more likely to blame the President for poor agency outcomes than they are to credit him for positive agency outcomes); Kagan, supra note 1, at 2310; Stack, supra note 334, at 264, 317.

#### Eisenhower and Truman prove.

Christenson ’15 [Dino and Douglas L. Kriner; 2015; Assistant and Associate Professors of Political Science at Boston University; Case Western University Law Review, “Political Constraints on Unilateral Executive Action,” vol. 65, no. 4]

Here, we take a different tack and emphasize the informal political costs of unilateral action. Specifically, we argue that presidents consider more than just whether Congress or the courts will act affirmatively to overturn a unilateral presidential order. Rather, presidents consider the longer-term political costs that unilateral action may entail. These political costs can take many forms, two of which are particularly important. First, when presidents act unilaterally, they may burn bridges with members of Congress opposed to the action on political, ideological, or even constitutional grounds. To be sure, in almost all circumstances, presidents will be able to carry the day and beat back any legislative effort to undo what they have done unilaterally. However, the ill will so generated on Capitol Hill may prove politically costly the next time the president’s policy wishes require action that only Congress can take. For example, despite being a rather blunt instrument, Congress retains the power of the purse and therefore, ultimately, the power to support or de-fund most policies that presidents begin unilaterally.40 This echoes Neustadt’s moral from the “three cases of command”—Truman’s firing of General Douglas MacArthur and seizure of the steel mills during the Korean War, and Eisenhower federalizing the Arkansas National Guard to integrate Central High School. In each case, the president succeeded in achieving his immediate policy objective. Yet, in each case, Neustadt argues the victory was a pyrrhic one, coming at a high political cost. Truman’s actions, in particular, only intensified ongoing battles with Congress on both the foreign and domestic fronts and likely hindered Truman’s efforts to extract concessions from Congress on other key elements of his legislative agenda.41

#### Especially for Biden.

Sensiba ’20 [Jennifer; November 6; MA in Emergency Management and Homeland Security at American Military University; Clean Technica, “Don’t Encourage Biden to Waste Political Capital,” https://cleantechnica.com/2020/11/06/dont-encourage-biden-to-waste-political-capital/]

Executive Power Is Expensive

While Trump abused executive power frequently, don’t be tempted by calls for Biden to take revenge and do the same thing. The short term gains may be enticing, but the longer term costs are much bigger than they might appear to be at first. Trump found out the hard way that pushing for things like the border wall, fights against LGBT rights, and attempts to prop up the failing coal industry alienates reasonable people. It’s easy to say “Trump did it! We can too!”, but don’t forget that was part of his undoing.

The worst thing a President Biden could do is use unconstitutional executive orders for something divisive like gun control. Yes, Trump actually did this, because he thought it would make him look good after the Las Vegas shooting, but it divided his own supporters. Loyalists made excuses or claimed it was part of some elaborate game to “beat the libs,” while people who really believed in gun rights deeply lost trust in Trump. Make no mistake, a Democratic president doing this would quickly earn the hostilities of both camps and suffer a deeper cost than Trump did.

That’s just one example. There are many other little regulatory things a President Biden could do to put the screws to Republicans, but in most cases it simply isn’t worth it when we need real legislation to get the job done.

#### Political capital is finite and decisive. It passes 5 bills a year.

Cohen ’19 [Jeffrey E; June; Political Science Professor at Fordham University; the President on Capitol Hill: A Theory of Institutional Influence, “Conclusions: Presidential Influence in Congress,” Ch. 11, p. 241-243]

The present study rehabilitates the idea of presidential influence in Congress. Instead of viewing influence as derived from personal characteristics, this study conceptualizes presidential influence in institutional terms. The major finding here is that presidents have a measurable amount of influence. Although presidents do not possess enough influence to dominate Congress, to force the legislature to accede to their every demand, they do possess enough influence to win on a significant number of roll calls that the president's side would otherwise lose. By winning on more roll calls because of this influence, presidents can affect the public policies produced through the legislative process.

This study conducted several types of analyses to estimate the amount of presidential influence. Since it can be hard to isolate causal effects with observational data, this research paired regression with quasi-experimental treatment effects analyses. The treatment effects analysis for the years 1953 to 2012 suggests that when the president takes a roll call position, the president’s side will win an additional 9% of House floor votes, or about five out of the fifty-four roll call positions that presidents take, on average, annually. Although five additional victories may not sound like much, if it leads to five major policy enactments, it may be consequential for the lives of citizens.2

Moreover, five additional pieces of legislation add up over the years—in a four-year term, there might be twenty additional enactments. From another perspective, Ansolabehere, Palmer, and Schneer (2016, 2018) estimate that there are eight or nine major legislative enactments per Congress from 1789 to 2010 and about seventeen from 1953 to 2010. The estimated five additional pieces of legislation presidents receive from position taking is nearly 30% of major enactments in the late modern period, assuming all the additional presidential wins are on major legislation. Through position taking, presidents can have consequential impacts on the nation's policies.

As conceptualized here, presidential influence is rooted in the office and in the surrounding political environment, termed "institutional presidential influence." There is some similarity between this conceptualization of influence and studies that emphasize the importance of contextual and political factors for presidential success (Bond and Fleisher 1990; Edwards 1990). But presidents still must decide whether to apply those institutional and contextual levers of influence; they need to be strategic decision makers, too. Hence, presidential influence is not merely a matter of dumb luck (Rockman 1981). Some presidents may be luckier than others, in that the office and the political environment provide them with greater resources, such as party control, upon which they can draw. But presidents still decide whether, when, how, and with whom they will exert effort, and how much, when trying to influence Congress.

#### Extinction.

Greene ’19 [Sherrell R.; Nuclear Engineering M.S. degrees from the University of Tennessee, recognized subject matter expert in nuclear reactor safety, nuclear fuel cycle technologies, and advanced reactor concept development, worked at the Oak Ridge National Laboratory (ORNL) for over three decades, as Director of Research Reactor Development Programs and Director of Nuclear Technology Programs; “Enhancing Electric Grid, Critical Infrastructure, and Societal Resilience with Resilient Nuclear Power Plants (rNPPs),” Nuclear Technology 205(3), <https://ans.tandfonline.com/doi/pdf/10.1080/00295450.2018.1505357?needAccess=true>, edited for language]

There are a variety of events that could deal crippling blows to a nation’s Grid, Critical Infrastructure, and social fabric. The types of catastrophes under consideration here are “very bad day” scenarios that might result from severe GMDs induced by solar CMEs, HEMP attacks, cyber attacks, etc.5

As briefly discussed in Sec. III.C, the probability of a GMD of the magnitude of the 1859 Carrington Event is now believed to be on the order of 1%/year. The Earth narrowly missed (by only several days) intercepting a CME stream in July 2012 that would have created a GMD equal to or larger than the Carrington Event.41 Lloyd’s, in its 2013 report, “Solar Storm Risk to the North American Electric Grid,” 42 stated the following: “A Carrington-level, extreme geomagnetic storm is almost inevitable in the future…The total U.S. population at risk of extended power outage from a Carrington-level storm is between 20-40 million, with durations of 16 days to 1-2 years…The total economic cost for such a scenario is estimated at $0.6-2.6 trillion USD.” Analyses conducted subsequent to the Lloyd’s assessment indicated the geographical area impacted by the CME would be larger than that estimated in Lloyd’s analysis (extending farther northward along the New England coast of the United States and in the state of Minnesota),43 and that the actual consequences of such an event could actually be greater than estimated by Lloyd’s.

Based on “Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack: Critical National Infrastructures” to Congress in 2008 (Ref. 39), a HEMP attack over the Central U.S. could impact virtually the entire North American continent. The consequences of such an event are difficult to quantify with confidence. Experts affiliated with the aforementioned Commission and others familiar with the details of the Commission’s work have stated in Congressional testimony that such an event could “kill up to 90 percent of the national population through starvation, disease, and societal collapse.” 44,45 Most of these consequences are either direct or indirect impacts of the predicted collapse of virtually the entire U.S. Critical Infrastructure system in the wake of the attack.

Last, recent analyses by both the U.S. Department of Energy46 and the U.S. National Academies of Sciences, Engineering, and Medicine47 have concluded that cyber threats to the U.S. Grid from both state-level and substatelevel entities are likely to grow in number and sophistication in the coming years, posing a growing threat to the U.S. Grid.

These three “very bad day” scenarios are not creations of overzealous science fiction writers. A variety of mitigating actions to reduce both the vulnerability and the consequences of these events has been identified, and some are being implemented. However, the fact remains that events such as those described here have the potential to change life as we know it in the United States and other developed nations in the 21st century, whether the events occur individually, or simultaneously, and with or without coordinated physical attacks on Critical Infrastructure assets.

#### Causes societal collapse.

Monarch ’20 [Benjamin; April 20; University of Kentucky College of Law, J.D. May 2015, LLM in Energy, Natural Resources, and Environmental Law and Policy from the University of Denver Sturm College of Law, Deputy District Attorney at Colorado Judicial Branch, and Term Member at the Council on Foreign Relations; Journal of Energy & Natural Resources Law; “Black Start: The Risk of Grid Failure from a Cyber Attack and the Policies Needed to Prepare for It,” vol. 38, no. 2]

In the industrial world, when a switch is flipped, we take for granted that it will produce light, boot a computer, illuminate a stadium or activate a power plant. We know, of course, that power losses can and do occur. Many of us have lit candles during a thunderstorm or brought out extra blankets when a blizzard takes down transmission lines. As of this writing, the most populated state in the United States, California, is experiencing rolling blackouts.1 Yet even in prolonged power outages, we expect that electricity will be restored and, consequently, life will return to normal. Perhaps we need ask, however, what if power cannot be restored in a timely manner? Concern is growing that in the not-too-distant future our electricity supply could be irreparably compromised by a cyber attack. The issue when considering a systemic grid failure of this nature is twofold: how did we reach a point where something so critical to routine life now presents an existential threat, and what can we do to mitigate the risk of a catastrophic grid attack?

This article posits that the emergence of cyber attacks on industrial control systems, as a means of war or criminal menace, have reached a level of sophistication capable of crippling those systems. This article argues that a new grid security policy paradigm is required to thwart catastrophic grid failure – a paradigm that recognises the inextricable link between commercial power generation and national security. In section 5, seven policy recommendations are outlined that may, in part, mitigate a future where grid attacks pose existential risk to nations and their citizenry. Those recommendations are: first, develop a comprehensive insurance programme to minimise the financial risk of grid disruption; second, train more cybersecurity professionals with particular expertise in industrial control systems; third, institute a federally mandated information-sharing programme that is centralised under United States Cyber Command; fourth, subsidise and/or incentivise cybersecurity protections for small to mid-size utilities; fifth, provide university grants for grid security research; sixth, integrate new technologies with an eye towards securing the grid; and, lastly, formulate clear rules of engagement for a military response to grid disruption.

The purpose of this article is to provide the reader with an introduction to this complex topic. It is the aim of the author to give orientation to this issue and its many branches in the hope that better understanding will animate further curiosity and, ultimately, positive action on the part of the reader. Although many skilled and earnest people work tirelessly to prevent a grid failure scenario, it is essential that more be added to their ranks each day. Advisors, engineers, regulators, private counsel to power generators, and many others who play roles in electric power production are crucial to this subject. So, while this article provides entrée to the topic of grid security, its long-term objective is to spur action by the entire energy-related community. In the end, no one is immune to consequences of grid failure and, therefore, everyone is responsible, in part, for promoting grid integrity.2 In this regard, lawyers who represent various actors in the energy sector are going to be faced with questions and potential legal risks of a magnitude that they have never experienced before.

1.2. Turning the power back on in a powerless world

‘Black start’, not to be confused with the term ‘blackout’, is the name given to the process of restoring an electric grid to operation without relying on the external electric power transmission network to recover from a total or partial shutdown.3 At first glance, this description is unremarkable, but it implies a disturbing catch-22 – how might one restore power if the entire external transmission network is compromised?

If an electric disruption occurs at a household level, some homes may be equipped with a modest gasoline generator to temporarily restore power. If a hospital loses power, it will almost invariably be resupplied by automatic, industrial-scale generators. These micro considerations hardly give anyone pause; they are hiccups on a stormy night or a snowy day. In other words, their ‘black start’ is a quick and effective process for restoring power. But what happens, at a macro level, when an electric grid supplying power to large portions of the United States goes black, or worse, what happens if all of the United States’ electric grids go down simultaneously?4 In that scenario, how might enough non-grid power be harnessed and transmitted to turn the United States’ lights back on? Moreover, how might such a catastrophe occur in the first place? Perhaps the more ominous question is not how, but whether or not we can survive such circumstances if they persist in the long term.

The United States electric grid (‘the grid’) is the ‘largest interconnected machine’ in the world.5 It consists of more than 7000 power plants, 55,000 substations, 160,000 miles of high-voltage transmission lines and millions of low-voltage distribution lines.6 The scale and complexity of the grid in the context of the modern digital world are beyond comprehension because within it are innumerable industrial control systems; incalculable connections to digital networks; millions, if not billions, of analogue or digital sensors; many thousands of human actors; and trillions of lines of programming code.7 Further complexifying the grid is that it is comprised of generations of technologies, stitched together in ways that are not inherently secure in a world of cyber threats.8 The vastness of the grid makes security of it challenging. Likewise, the vastness of the grid makes the opportunities for intrusion seemingly infinite.

By any measure, grid failure will unleash a parade of horrors. Stores would close, food scarcity would follow, communication would cease, garbage would pile up, planes would be grounded, clean water would become a luxury, service stations would yield no fuel, hospitals would eventually go dark, financial transactions would stop, and this is only the tip of the iceberg – in a prolonged grid failure social chaos would reign, once-eradicated diseases would re-emerge and, increasingly, hope of returning to a normal life would fade.9 The notion of complete grid failure, once relegated to science fiction comics or James Bond movies, is now not only possible but also one of the most pressing national security threats today.10